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# Fintech

China

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# CHINA

## Law and Practice

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## 1. Fintech Market

### 1.1 Evolution of the Fintech Market

Over the last twelve months, the Chinese government has made serious efforts to enhance the regulation over the finance-related industry and to solve concerns over personal information leakage. It continues cracking down and cleaning up the peer-to-peer (P2P) lending business and other fintech businesses that cannot satisfy the regulatory requirements or impose new industrial stability risks. Such an effort shows that the Chinese government is cautious about the new challenges the fintech businesses bring to the existing compliance and regulatory mechanism.

Although the government encourages the development of fintech, it does not want anyone to conduct illegal or non-compliant businesses under the name of fintech, or the fintech to impose other regulatory or compliance risks, whether such risks are within the banking industry regulation or from other industry regulatory perspective. For example, not long after the facial recognition payment technology rolled out nationwide, the Cyberspace Administration of China (CAC) has expressed its concern over the potential misappropriation of the facial information of individuals. To address such a concern, the Payment and Clearing Association of China (a self-discipline industry association, PCAC) quickly issued the Self Discipline Convention this year to reiterate the data security and privacy policies that should apply to the facial recognition payment.

Notwithstanding the foregoing, China is dedicated in the development of fintech. People's Bank of China (the central bank of China, PBOC) issued the Development Plan on fintech (2019-21, the "Development Plan") in the middle of 2019, which generally summarizes the plan and government's attitude towards fintech. The major tasks described in the Development Plan include:

- the strategic planning of fintech;
- the reasonable application of fintech;
- application of the fintech in financial service;
- the technical ability to prevent financial risks;
- censorship of fintech; and
- support to the fintech industry.

It is anticipated that in 2020, the fintech industry will continue to grow given the policy described in the Development Plan. In addition, China is scheduled to issue its digital currency in 2020. China's digital currency will be a sovereign currency in digital form, which makes it different from Bitcoin or Libra.

It is also expected that China will continue improving its regulatory regime to address the new risks and challenges raised by

fintech. Therefore, "innovation" and "compliance" will be two main themes for all fintech business participants in China. It is interesting and fascinating to see how those two main themes reach a "balanced" status by both the regulatory authorities and the fintech business participants.

## 2. Fintech Business Models and Regulation in General

### 2.1 Predominant Business Models

Robotic Process Automation (RPA) and internet finance are currently the two predominate fintech business models in China. The application of RPA can largely improve the processing efficiency in data collection, verification and simple analysis and are widely used by traditional players such as banks, securities firms, insurance companies, trust companies and FMCs (fund management companies) as well as new comers such as payment companies, lending service providers, supply chain service providers and robo-advisers, and there is a trend that RPA will replace human power in repeated work. Internet plus finance has grown very fast throughout the whole financial industry of China over the past decade, and now with numerous technology companies who provide solutions to or collaborate with financial institutions, we see it continues to develop and will develop into a new stage based on high technologies of AI (artificial intelligence), big data, cloud computing and IOT (internet of things).

### 2.2 Regulatory Regime

China's legal system is based on the civil law system, therefore the sources of law governing fintech industry are all in the form of code law. Currently, it is in the form of various laws, administrative regulations, rules, policies and circulars at the central government level, among which the most important laws and regulations include:

- fundamental laws that may be applicable in fintech businesses such as:
  - (a) PRC General Principles of Civil Law and PRC General Provisions of the Civil Law, both adopted by the National People's Congress (NPC);
  - (b) PRC Contract Law adopted by the NPC;
  - (c) PRC Tort Liability Law adopted by the standing committee of the NPC;
  - (d) PRC Law of the People's Bank of China adopted by the NPC;
  - (e) PRC Criminal Law adopted by the NPC;
  - (f) PRC Law on Anti-money Laundering adopted by the standing committee of the NPC;
  - (g) PRC Cybersecurity Law adopted by the standing committee of the NPC; and

- (h) PRC Consumer Protection Law adopted by the standing committee if the NPC; and
- laws and regulations governing activities of financial institutions or concerning a particular industrial sector such as:
  - (a) PRC Law on Commercial Banks adopted by the standing committee of the NPC;
  - (b) PRC Securities Law adopted by the standing committee of the NPC;
  - (c) PRC Insurance Law adopted by the standing committee of the NPC;
  - (d) PRC Trust Law adopted by the standing committee of the NPC;
  - (e) Certification Rules on fintech Products issued by the Certification and Accreditation Administration of the PRC;
  - (f) Guiding Opinions on Promoting the Sound Development of Internet Finance jointly by PBOC, CAC, the Ministry of Industry and Information Technology (MIIT) and seven other central governmental agencies;
  - (g) Guiding Opinions on Regulating the Asset Management Business of Financial Institutions issued by the PBOC, the China Banking and Insurance Regulatory Commission (CBIRC), the China Securities Regulatory Commission (CSRC) and the State Administration of Foreign Exchange (SAFE);
  - (h) Measures for Payment and Settlement and Administration Measures on Payment Services by Non-financial Institutions, both issued by the PBOC;
  - (i) Interim Measures for the Administration of the Business Activities of Online Lending Information Intermediary Institutions jointly issued by the CBIRC (former China Banking Regulatory Commission), MIIT, CAC and the Ministry of Public Security (MPS);
  - (j) Administration Measures on Electronic Bank Business issued by the CBIRC (former China Banking Regulatory Commission);
  - (k) Interim Measures on Internet Insurance Business issued by the CBIRC (former China Insurance Regulatory Commission);
  - (l) Notice on Improving Efforts in Regulating the Conduct of Asset Management Business through Internet and Carrying Out Acceptance Inspection Work issued by the PBOC;
  - (m) Administration Measures on Transactions through Network issued by the State Administration for Market Regulation (SAMR, the former State Administration for Industry and Commerce); and
  - (n) Technical Norms for Protection of Personal Financial Information issued by the PBOC.

## 2.3 Compensation Models

The following compensation models are observed in market practice: broker fee charged on merchants or both merchants and customer where a financial product is sold through the platform operated by a Fintech service provider, handling fee charged on users of third-party payment service, membership fee or package fee charged on users of robo-adviser services and technology service fee/information service fee charged on financial institutions who purchase and receive services from a technical company who can provide Fintech solutions. In each compensation model, a clear rate of service charge must be notified to customers/users in advance, with a written or electronic record of charge provided later.

## 2.4 Variations Between the Regulation of Fintech and Legacy Players

Legacy players such as banks, securities firms and insurance companies are highly regulated in China. The Chinese regulators are in the process of setting up a licensing system and adopting new regulatory models with respect to fintech industry participants in innovative practice areas, as long as they view such new participants as performing financial services. A good example lies in the payment industry, which is that the fintech company is required to obtain payment licences, compared with the legacy players that are not required to obtain a special licence to perform payment business given that they are licensed to perform traditional banking services. Another example is that an online distributor of financial products must qualify as a licensed financial institution (ie, FMCs, banks or other financial institutions, as applicable, who are allowed to sell certain kinds of financial products to the public). It is hard to say that a fintech company is less regulated than a legacy player in terms of meeting the market access and regulatory compliance requirements, if services performed by such fintech companies may bring a similar risk to customers, although not in exactly the same manner.

## 2.5 Regulatory Sandbox

Pilot programs on regulatory sandboxes have been carried out by the local government in several Chinese cities (including Beijing) before and in 2019. In early 2020, the PBOC announced for the first time at the central governmental level six programs on regulatory boxes, focused on innovative areas of IOT (intent of things), big data, AI (artificial intelligence), block chain and API (Application Programming Interface). The 11 pilot companies selected by the PBOC under the said sandbox programs include state-owned and joint stock banks, urban banks, settlement and payment service providers and hi-tech companies. Through the sandbox, the PBOC and other regulators can take a close look at how such sandbox companies will run under the policy-supporting environment, what risk may arise from innovative products, services and business models, and how it can be con-

trolled or dealt with. According to the PBOC, following the step of Beijing, nine other major cities and provinces of China are anticipated to initiate their localised sandbox programs in 2020.

## 2.6 Jurisdiction of Regulators

In China, the fintech industry participants are generally regulated by the following main regulators:

- the PBOC which is the top policy maker under the State Council promoting the development of fintech industry in China;
- the SAMR and its local branches, which are in charge of fintech companies' industrial and commercial registration and normal business conduct;
- the MIIT and its local branches, which regulate telecommunication-related services involved in the fintech industry;
- the CAC, which regulates network safety, data compliance and other relevant issues arising from internet data exchange and processing involved in the fintech industry;
- fintech participants are also regulated in accordance with laws and regulations of the financial supervision bodies, ie, CBIRC and CSRC, if they are viewed by the regulators as carrying out relevant financial business; and
- the MPS and its local branches are leading the fight against internet financial crimes.

## 2.7 Outsourcing of Regulated Functions

Some functions of Chinese regulators such as self-discipline measures, launch of a pilot program and formulation of technical guidelines, standards or rules are outsourced to the relevant industry association (eg, PCAC). The relevant industry association, being authorised by the competent regulators, has its own charter, self-discipline convention, rules and regulations governing all its members and their activities. The outsourcing of regulated function to a regulated entity may pose some risk to the market, however, such risk is controllable where there is a regulatory sandbox in which the regulated entity operates.

## 2.8 Significant Enforcement Actions

Since 2018, the Chinese government initiated a nation-wide campaign against irregularities in the businesses of peer-to-peer (P2P) lending and online small-loans, accompanied by a measure to freeze the grant of new licence, and the ongoing clean-up of the said market was still the regulatory focus in 2019. As a result, according to statistics, the number of companies doing the business of peer-to-peer (P2P) lending or online small-loans dropped sharply from more than 1,600 in 2017 to around 640 in October 2019, among which only 24 companies have obtained the operating permit for online small-loan business from the competent local financial affair offices throughout the whole nation. The closedown of most small-to-medium sized players

shows China's concerns regarding the disorder of this market and its capability to enforce the law firmly and quickly.

## 2.9 Implications of Additional Regulation

In October of 2018, the PBOC, the CBIRC and the CSRC jointly issued the Anti-laundering and Anti-terrorism Financing Regulations on Internet Financial Institutions (for trial implementation), pursuant to which the internet financial institutions shall access the network monitoring platform developed by the PBOC (the Network Monitoring Platform), set up anti-money laundering departments and report transactions involving large sums of money and dubious transactions through the Network Monitoring Platform.

The basis of big data is the collection and utilisation of information, the processing of which will necessarily involve the acquisition of individual information. As regulators are now keeping their eyes on the protection of individuals' information, industry participants are not allowed to transmit, store, process and analyse outside China any of the individual financial information collected within China. Industry participants must not sell, provide to a third party without the consent of the customers or use for non-service purposes the individual information of their users.

The PRC Cybersecurity Law of the People's Republic of China has listed the financial industry as one of the most important industries and fields, and China will give special protection to the financial industry. In October 2019, the PBOC has promulgated the draft Interim Measures on Protection of Personal Financial Information (Data) to solicit opinions among financial institutions and this regulation containing more detailed compliance requirements on the internet financial industry is expected to be put into effect in 2020.

## 2.10 Regulation of Social Media and Similar Tools

The use of social media and similar tools is subject to regulation. Relevant regulations of central and local governments have stipulated that internet financial advertisements published through social media (especially through large portal websites, search engine websites and so on) shall be the focus of supervision. Besides, several kinds of internet financial advertisements are strictly prohibited (eg, advertisements without risk tips and advertisements that contain a guarantee of future returns, advertisement of financial products by a company without operating licence to sell them).

## 2.11 Review of Industry Participants by Parties Other Than Regulators

Besides regulators, the self-regulatory organisations will review the activities of their members. The National Internet Finance Association of China (NIFA) is recognised as the first nation-

wide self-regulatory organisation of the internet financial industry. NIFA may have higher requirements for its members. For example, NIFA released the Standards on Information Disclosure of Internet Finance: P2P Lending, pursuant to which, members of NIFA shall disclose required information to NIFA on a monthly basis.

## **2.12 Conjunction of Unregulated and Regulated Products and Services**

Online customer-directing platforms for financial products are good examples. The sale of financial products through internet is regulated, but the provision of product information is not regulated by financial supervision bodies. In such business models, platform operators enter into co-operation or service agreements with financial product providers who are regulated. When clicking the button shown on the interface of platforms, users are redirected automatically to the websites of the financial product providers or display pages of the financial products. The financial product providers will pay the platform operators commission, or a technical service fee based on the agreement between them if users are successfully directed to the said websites/pages.

In practice, different local regulators have different attitudes towards this kind of business model and it is uncertain as to whether it will be subject to regulation by financial supervision in the future. However, we see a trend that the regulation in this regard is tightened to prevent the sale of financial products by a technology company without a competent sales permit.

## **3. Robo-Advisers**

### **3.1 Requirement for Different Business Models**

In China, most robo-advisers act as an independent investment adviser with specialised expertise in a particular asset class. Different business models are used with regard to each asset class, but in most cases, such robo-advisers aim at providing advice on stock trading and futures trading. Another type of commonly observed robo-adviser has more complex functions and recommends diversified financial products to customers based on their risk tolerance and goals. In such situations, multiple business models are applied to output proper advice.

### **3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers**

Legacy players in China tend to take advantage of automation by incorporating semi-automated systems into their existing platforms due to concerns about confidentiality, customer protection and costs to replace/upgrade their infrastructures. However, we see increasing cases in 2019 where legacy players started or expanded their cooperation with emerging technol-

ogy companies focusing on providing robo-adviser solutions to clients based on the application of big data, cloud computing and AI (artificial intelligence).

For example, in May 2019, Shanghai Pudong Development Bank and Licaimofang, a domestic company with its focus on the business of intelligent wealth management, jointly developed a robo-adviser product called "G-DISCOVER". As another example, in March 2019, Bank of Nanjing, supported by PINTEC, a leading Fintech service provider listed NASDAQ, developed a new intelligent wealth investment product for its customers. With evolving industry practices, a larger diversity of robo-adviser services provided by legacy players may be expected in China.

## **3.3 Issues Relating to Best Execution of Customer Trades**

One of the advantages of robo-advisers is the elimination of moral hazard in the execution of customer trades, given that automated financial advisers will not take personal interests into consideration, as would do by mundane staff. The customers using robo-advisers in China are nonetheless exposed to risks of conflicts of interest to some extent. With limited investment instruments available and a lack of regulatory focus on the issue of best execution, some uncommon asset classes with high uncertainty and risks have also become part of the options provided by robo-advisers in China. The Guiding Opinions on Regulating the Asset Management Business of Financial Institutions issued by the PBOC, CBIRC, CSRC and SAFE on 27 April 2018 provides that competent licences are also required for robo-adviser service providers, which may have positive influences on the aforementioned issue.

## **4. Online Lenders**

### **4.1 Differences in the Business or Regulation of Loans Provided to Different Entities**

On the business level, most loans to individuals are obtained through online lending platforms that adopt simplified application and approval procedures requesting only a limited amount of personal information. Small business owners who are qualified to apply for bank loans are the main customers of commercial banks engaging in the online lending business.

In terms of the overall regulation of the online lending industry, no line is drawn between individual borrowers or small business owners, as the Interim Measures for the Administration of the Business Activities of Online Lending Information Intermediary Institutions jointly issued by CBIRC, MIIT, CAC and MPS on 17 August 2016 (the "Interim Measures of Online Lending Intermediaries") has set the framework of regulation on online

lending platform without expressly categorising loans to individuals or entities.

Moreover, there are some narrowly tailored regulations with respect to the online lending industry due to its unique nature. For example, most of the borrowers in the online lending industry are individuals who are more vulnerable to the risks of leaks of personal information and debt collection using violence, and such concern is covered by the Notice on the Regulation and Rectification of the Cash Loan Business promulgated in 2017 (the “Cash Loan Notice”) and the Implementation Plan for Special Rectification of Internet Financial Risks promulgated in 2016.

## 4.2 Underwriting Processes

In the typical underwriting process, the online lending platform acts as an intermediary who collects basic personal information about the borrowers, categorises the information with repayment capacity and provides lenders with such standardised information. Paipai Dai is a leading company adopting this business model.

Other underwriting models existed previously, in which the platforms act as guarantors, who provide a guarantee on the repayment of loans or creditors, who collect proceeds from investors or repurchase debt from individual lenders. However, these business models are prohibited by the Interim Measures of Online Lending Intermediaries since 2016.

## 4.3 Sources of Funds for Loans

The different legal and regulatory issues associated with the various sources of funds for loans are as follows.

- Peer-to-peer(P2P): as the online lending business model that involves most individual participants both as borrowers and lenders, the peer-to-peer (P2P) model has been the focus of regulatory forces. The authorities put emphasis on the protection of personal information and control of individual payday loans, such as the Cash Loan Notice, which emphasises that loans made to individuals should be characterised by real consumer demands in a given situation (eg, auto finance).
- Lender-raised capital: the source and management of funds have been the essential issues in lender-raised capital, with the concern that the platforms may engage in illegal fund-raising and misuse of proceeds, which is already prohibited by the Interim Measures of Online Lending Intermediaries since 2016.
- Deposit taking: similar to lender-raised capital, the management of funds is the major issue in online lending businesses using deposits. The Measures for the Administration of the Online Lending of Commercial Banks (Consultation Paper)

published in November 2018 indicates that licences are required for online lending participants in various aspects and co-operation with third-party institutions is strictly restrained.

- Securitisations: for loans originated by peer-to-peer lending that are sold off to institutional investors, the major issues are the protection of borrowers from debt collecting using violence and the regulation on the funds. Online lending platforms are prohibited from being involving in securitisation business according to the Interim Measures of Online Lending Intermediaries since 2016, although they seek to circumvent such regulation in various ways.

## 4.4 Syndication of Loans

Syndication does occur in the online lending industry. The more common way of co-operation among institutions, however, is that online lending firms such as peer-to-peer platforms provide categorised borrower information for other participants, including commercial banks, who, in return, provide funds for such institutions.

## 5. Payment Processors

### 5.1 Payment Processors’ Use of Payment Rails

Payment processors (including e-payment service providers such as Alipay and WeChat Pay) in China must use the payment rails that are managed by the properly licensed entities and cannot create or implement new payment rails on their own. Currently, the available payment rails include the payment processing platforms managed by China UnionPay and China Nets Union.

In the future, if more players are licensed for the payment clearing and settlement business, the payment processors will also be able to use the payment rails created by those players.

### 5.2 Regulation of Cross-border Payments and Remittances

Cross-border payments and remittance are mainly regulated by the PBOC and the SAFE. PBOC regulates the cross-border payment in offshore RMB carried out by banks and licensed payment processors. SAFE regulates the cross-border payment in foreign exchange carried out by banks and licensed payment processors which obtain the special permit to engage in foreign exchange cross-border payment businesses issued by SAFE.



## 6. Fund Administrators

### 6.1 Regulation of Fund Administrators

Fund administrators are regulated under the Securities Investment Fund Law of the PRC (the “Securities Investment Law”) and the associated regulations.

Fund administrators are regulated depending on the nature of the funds they are managing. Fund administrators that manage publicly offered funds are subject to approval by the CSRC and fund administrators that manage private equity funds are subject to registration with the China Securities Investment Funds Association and becoming a member of this organisation.

A recent development indicates that the fund administrators are likely to be subject to the trust law. A recent meeting minute of the Supreme People’s court provides that, if a fund administrator’s asset management business is judicially determined as a trust relationship, the laws and regulations applied to the trust relationship will also be applied in the disputes arising therefrom. Such a development adds a new consideration in the fund administration business.

### 6.2 Contractual Terms

In China, fund advisers are purely the advisory individual or entities that give investment advice and do not have responsibilities to supervise the fund administrator. Under the Securities Investment Law, the fund trustee has the responsibility of supervising the fund administrator.

The Securities Investment Law imposes the requirement of truthfulness, accuracy and completeness on the information disclosed by the fund administrator and the fund trustee.

### 6.3 Fund Administrators as “Gatekeepers”

Fund administrators have a duty to speak up if they see suspicious or unlawful behaviour. The Securities Investment Law and the Provisional Rules on Supervision and Administration of the Private Equity Investment Fund (the PE Fund Rules) provide that the fund administrator should disclose material information that may have a substantial impact on the lawful interests of the investors, should not withhold information or provide false information.

The fund administrator should also, in a timely fashion, provide the fund operation information to the investment funds association truthfully, accurately and completely, and should report material operational issues within ten business days.

## 7. Marketplaces, Exchanges and Trading Platforms

### 7.1 Permissible Trading Platforms

In terms of the asset classes traded on platforms, the major types of national trading platforms in China, set up by law, are listed as follows:

- stock exchange market regulated by the CSRC;
- bond trading market consisting of the interbank bond market, bond exchanges and commercial banks, mainly regulated by the PBOC;
- commercial paper exchange market mainly regulated by the PBOC;
- fund trading platforms regulated by the Asset Management Association of China, an industry self-discipline organisation under the guidance of the CSRC;
- futures exchange platforms such as the Shanghai Futures Exchange and the Zhengzhou Commodities Exchange, regulated by the CSRC; and
- emerging online exchange and trading platforms, which have not found their position in the financing regulatory system of China yet and are subject to various authorities, including the CSRC, the CBIRC and the PBOC.

### 7.2 Regulation of Different Asset Classes

The regulatory approach in China is functional regulation, under which, different products and platforms are subject to different supervising bodies categorised with asset classes. As discussed in 7.1 **Permissible Trading Platforms**, various regulatory regimes are involved with respect to separate asset classes and services. In other words, multiple licences may be required if a financial service provider engages in business relating to several different types of asset classes. For example, for the sale of insurance, insurance broker licences are required, while for the securities and futures business, operating licences for securities and futures are required.

### 7.3 Impact of the Emergence of Cryptocurrency Exchanges

As an entirely new genre of intangible asset, the emergence of cryptocurrency calls for an upgrading of the technology used in regulation and innovation of legal theories to incorporate cryptocurrency properly into the existing regulation system. Uncertainty regarding cryptocurrency and consumer protection in the trading process, and concerns regarding anti-money laundering have been the major issues addressed by the regulatory authorities.

In September 2017, China officially declared ICOs, or fund-raising through cryptocurrencies, illegal and shut down platforms facilitating such trades. On 24 August 2018, the CBIRC, PBOC,

MPS and two other cabinet-level authorities jointly issued the Notice on the Risks of Illegal Fund-raising using the terms cryptocurrency and blockchain, warning investors against the risk of Ponzi schemes in such deals. However, the PBOC is moving fast in the R&D of China's own CBDC (Central Bank Digital Currency) in reaction to challenges that the cryptocurrency may bring about.

## 7.4 Listing Standards

Taking the stock market as an example, according to the Measures for the Administration of Initial Public Offering and Listing of Stocks (2018 Amendment) issued by the CSRC and the Stock Listing Rules of the Shanghai stock exchange, the listing standards for the main board are as follows:

- the issuer shall be a joint stock limited company that has been legally established and lawfully exists;
- the business operations of the issuer shall last for three years or more, unless it is so approved by the State Council;
- there shall be no major change regarding an issuer's main business, directors and senior managers, or alteration of the actual controller within the last three years;
- the net profit of the issuer for the last three fiscal years shall be positive and the total amount shall exceed CNY30 million;
- the net cash flow generated by business operations in the last three fiscal years shall exceed CNY50 million, or the total operating income in the last three fiscal years shall exceed CNY300 million;
- the total share capital of the issuer prior to the IPO shall be no less than CNY30 million;
- at the end of the latest fiscal period, the proportion of intangible assets to net assets shall be no more than 20%; and
- at the end of the latest fiscal period, there shall be no unrecovered losses.

The actual criteria applied by the Stock Issuance Examination and Verification Committee in reviewing IPO materials is perceived to be more detailed than the listing standards above, but no official statement has been made.

The listing standards for the start-up board are lower than those for the main board in terms of financial indexes. In 2019, China set up the Science and Technology Innovation Board (the "STAR Market"), a new trading platform launched within the Shanghai Stock Exchange. The SRAR Market will experiment with a registration-based system for listed companies under which profit-making status for candidate companies is not a must and it is anticipated that STAR Market will become China's NASDAQ exchange.

## 7.5 Order Handling Rules

Order handling rules apply in China. Taking the stock market for example, centralised competitive bidding in securities trading follows the principle of price preference and time preference, meaning that a higher purchase price offered by clients will be accepted in priority to a lower purchase price by the system, while a lower selling price offered by clients will be accepted in priority to a higher selling price by the system and, where different clients offer the same purchase price or selling price, the one who offers the price first will be accepted by the system.

## 7.6 Rise of Peer-to-Peer Trading Platforms

Through millions of consumers flocking in, the rise of peer-to-peer platforms brings huge impacts on the ecosystem of traditional platforms. Mass idle funds and consumers are attracted by the peer-to-peer trading platforms, and loans are made with simplified credit review procedures and fund management systems. Banks that used to play the essential role in the lending process become a fund-raiser and provider, and rely on the credit review of peer-to-peer trading platforms.

One of the issues posed by the emerging platforms is the lack of a well-established personal credit system in China, which in turn aggravates the difficulty of regulating peer-to-peer lending. Another urgent problem is that an overall licensing and regulatory system has to be established to control the rapidly growing industry effectively.

## 7.7 Issues Relating to Best Execution of Customer Trades

Although the qualification of companies operating trading platforms has been one of the major topics of regulation on trading platforms in China and various licences for trading platforms of each asset class are required by regulatory bodies, no particular rules with respect to best execution of customer trades has been issued. As a specific topic regarding the protection of investors, relevant rules and disciplines might be expected when a more comprehensive supervision system of the trading platforms is established.

## 7.8 Rules of Payment for Order Flow

The rules permitting or prohibiting payment for order flow are provided by the Regulations on the Supervision and Administration of Securities Companies (2014 Revision) issued by the State Council, which state that a securities company and its staff may not seek illicit profits from offering investment suggestions to their clients. It is suggested that payment for order flow is not permitted in China, but law-makers have not put much focus on this issue yet.

## 8. High-Frequency and Algorithmic Trading

### 8.1 Creation and Usage Regulations

There is no specific regulation on high frequency trading or algorithmic trading. However, it does not mean that such trading practice is unregulated. A criminal trial in 2015 determined that traders using high frequency trading constitute a crime of manipulating the securities or exchange market. Under the newly amended Securities Law, which will be implemented in March 2020, frequent trading requests followed by cancellation that are not for transaction purpose is prohibited as it constitutes manipulation of the market. In futures trading, high frequency trading, algorithmic trading that may affect the security of the exchange system or disturb the normal trading, and other abnormal behaviours are defined as abnormal trading behaviours. The futures exchange is obligated to prevent and take effective measures to stop such abnormal trading behaviours. Because the line of lawful high frequency trading and algorithmic trading have not been defined by the law, trading activities leveraging such methods are in grey areas and are at higher risk of being determined as being illegal than last year due to the newly amended Securities Law.

### 8.2 Exchange-like Platform Participants

This is not applicable as there are no specific laws or regulations on this, as discussed in **8.1 Creation and Usage Regulations**.

### 8.3 Requirement to Register as Market Makers When Functioning in a Principal Capacity

This is not applicable as there are no specific laws or regulations on this, as discussed in **8.1 Creation and Usage Regulations**.

### 8.4 Issues Relating to the Best Execution of Trades

This is not applicable as there are no specific laws or regulations on this, as discussed in **8.1 Creation and Usage Regulations**.

### 8.5 Regulatory Distinction Between Funds and Dealers

This is not applicable as there are no specific laws or regulations on this, as discussed in **8.1 Creation and Usage Regulations**.

### 8.6 Rules of Payment for Order Flow

This is not applicable as there are no specific laws or regulations on this, as discussed in **8.1 Creation and Usage Regulations**.

## 9. Financial Research Platforms

### 9.1 Registration

There is no specific law or regulation in China covering the business operation of financial research platforms. However, there

are regulations and rules on investment fund sales, fund sales settlements, fund investor registration, fund evaluation and appraisal, and fund advisory services. As long as the platform does not engage in the above businesses, the platform will not be subject to securities or investment funds regulation.

However, such platforms will be subject to telecoms regulation as they are internet content providers. If they are providing information for fees, they will likely need a value-added telecoms licence for an internet information service. If they are providing information for free, they will need to register their online operation as a non-profit internet information service.

### 9.2 Regulation of Unverified Information

Under the Securities Investment Law, all the participants in the investment fund business have the legal obligation only to share true, accurate and complete information. If the participants are not doing so, they will be punished by the regulatory authorities and their administrative permit to engage in the business may be revoked.

In addition, under the Criminal Law, it is a crime for anyone to disclose insider information, or use such information in trading, or use other non-insider internal information in trading, or create or spread securities or exchange-related false information, or manipulate a securities or an exchange market with such information.

### 9.3 Conversation Curation

Under the telecoms and cybersecurity laws and regulations, platform operators are charged with the responsibility to ask for the real name of the platform users before they allow those users to use the platform and post any information. The users are aware of the fact and know that they can be traced if they post improper information or conversation.

In addition, at the request of the governmental authority, the platform operator must delete an improper conversation and report details about it to the authority.

### 9.4 Platform Providers as “Gatekeepers”

Under the telecoms regulation and the cybersecurity rules, the platform operators are required to record user activities and their posts on the platform for at least 90 days. They are also legally required to block, delete, and report any improper, suspicious, or unlawful behaviour, keep the relevant records of such behaviour and report the same to the regulatory authorities. If they do not do it, their administrative permits or their registration for the platform will be revoked.

## 10. Insurtech

### 10.1 Underwriting Processes

In China, insurers tend to provide standardised products for consumers, thus the typical underwriting process is fairly simple. A consumer will initiate the process by filling in the application form and after the insurer gathers all the necessary information to evaluate the risk exposure, the insurance policy will be approved. With the rising trend of insurtech, many insurance companies are beginning to offer insurance policies and complete the initial customer evaluation on online platforms, thanks to the wide application of Robotic Process Automation (RPA). However, after online approval of the insurance policy, most insurance companies still require the insurance applicants to execute various contracts offline.

Protecting consumers from misleading and inaccurate solicitation has been one of the issues frequently addressed by the regulatory authorities. On 1 June 2018, the CBIRC reinstated that insurance marketing on self-media should be regulated in the Notice on Strengthening the Administration of Insurance Marketing and Publicity Activities in Self-Media.

### 10.2 Treatment of Different Types of Insurance

As required by the PRC Insurance Law, an insurer is forbidden to engage concurrently in the businesses of insurance of person and insurance of property. Correspondingly, there are two departments of the CBIRC, the Property Insurance Regulatory Department and the Person Insurance Regulatory Department, separately regulating the business of insurance of person and insurance of property. The rationale might be the concern that the proceeds received from personal insurance purchasers may be misappropriated to satisfy the huge needs for cash in the property insurance business.

## 11. Regtech

### 11.1 Regulation of Regtech Providers

Even if there have not been clear regulations on regtech providers, the Chinese government embraces regtech as a good opportunity and method for making sure that fintech companies will be in compliance with the current regime. For example, in 2017, the PBOC formed the fintech Committee. The PBOC announced that one of the main purposes of the fintech Committee is to reinforce the research and application of regtech. In 2018, the CSRC pushed the adoption of regtech measures amidst broader efforts by Beijing to rein in the Chinese financial sector. With encouragement from the government, regtech companies in China are expected to grow fast in the next couple of years, however, as they help the regulators in monitoring the daily activities of fintech companies by tracing, collecting

and processing data, the need of legislation on protecting state secrets has become urgent. Furthermore, where in the future more powers are delegated to such regtech providers by the regulators, there are more requirements of duties imposed on them by law.

### 11.2 Contractual Terms to Assure Performance and Accuracy

When dealing or co-operating with a technology provider, financial service firms are always seeking contractual protection to safeguard their trade secrets, prevent leakage of customer information and ensure the satisfaction of all regulatory requirements on data compliance by such technology provider. For example, all data collected and processed by such technology provider must be uploaded and stored on the financial service firm's own server and any data transmission to a third party or any unauthorised use without permission is forbidden. Some of those contractual terms are reflected in regulation or technical norms of the relevant industry, in principle or in details.

### 11.3 Regtech Providers as “Gatekeepers”

The regtech industry contains three constituent parties: regulators, regulated financial companies and regtech providers. Recently, the government has worked on the extensive use of regtech, including the future establishment of a big data enforcement platform, the use of smart technology to help to resolve cases, the development of a standardised electronic evidence collection tool for collecting information on the links between entities, funds and transactions and the establishment of a smart control system for inspection of evidence, assessment of conduct and determination of punishments.

However, these projects are still at an initial stage, so there is no clear practice pattern used by the government. We tend to believe that, with the vigorous advancement of scientific and new technologies, it is inevitable that regtech will have greater ability than the government itself to discover suspicious and unlawful behaviour, therefore the regtech providers will have to take more initiatives to report such situations to the government and it shall be the regulators' responsibility to supervise these situations.

## 12. Blockchain

### 12.1 Use of Blockchain in the Financial Services Industry

Blockchain was heavily implemented with bitcoin and other cryptographic currencies, as well as ICOs, by the legacy players in China.

However, the Chinese government denied the currency nature of bitcoin in 2013 through a joint circular issued by the PBOC, the MIIT, and the CBIRC (former China Banking Regulatory Commission). It also banned all financial service providers from engaging in all bitcoin-related transactions.

In addition, in 2017, the PBOC, the CAC and the Ministry of Industry and Information Technology, as well as other bank and insurance regulatory authorities, jointly released another circular that announced the illegality of ICOs of all forms and banned all platform services (such as exchanging, sales, trading, initial offering, evaluating or pricing and information agency) relating to cryptocurrencies.

The above circulars substantially suppressed blockchain implementation relating to currencies and ICOs. Now, blockchain players are implementing blockchain as a non-currency related technology to support the development of other industries, such as healthcare, logistics, internet information services and big data.

## **12.2 Local Regulators' Approach to Blockchain**

The local regulators in China in general welcome blockchain-based innovation, as long as it is not related to any type of currency and initial offerings.

However, the government is also wary about the potential challenge the technology may create for content censorship. As a result, the CAC released the new Provisions on the Administration of Blockchain Based Information Services ("the Blockchain Provisions") which took effect from February 2019. The Blockchain Provisions requires that blockchain-based information service providers should be registered with the CAC, adopt real name verification of their service users, track and record posts by users, and censor illegal content posted.

## **12.3 Classification of Blockchain Assets**

Since ICOs of all forms are announced as illegal, no "issuers" of blockchain assets exist lawfully in China.

## **12.4 Regulation of "Issuers" of Blockchain Assets**

Blockchain assets trading platforms are banned in China.

## **12.5 Regulation of Blockchain Asset Trading Platforms**

Blockchain assets trading platforms are banned in China.

## **12.6 Regulation of Invested Funds**

No funds are allowed to invest in blockchain assets in China.

## **12.7 Virtual Currencies**

Virtual currencies are defined differently from blockchain assets, but they are both banned in China.

## **12.8 Impact of Privacy Regulation on Blockchain**

Under the current blockchain-related regulations, blockchain information service providers are required to provide their own personally identifiable information to government agencies, obtain personally identifiable information of users, and censor and take down illegal information posted using their blockchain-based information services. Blockchain has the potential to become an effective and powerful regulatory tool.

# **13. Open Banking**

## **13.1 Regulation of Open Banking**

In general, the Chinese banking regulations inhibit open banking. According to the circulars issued in 2011 by the PBOC regarding the protection of individual financial information, banks in China are not allowed to sell individual financial information and should not provide individual customer information to any third party (unless written consent is secured from the customer and it is necessary to share such information to enable the customer to do banking businesses, or it is otherwise warranted by the law). There is no legal basis for open banking in China.

## **13.2 Concerns Raised by Open Banking**

Since open banking is not available in China, banks and technical service providers do not yet need to worry about this issue.

**Global Law Office** is mainly based in Beijing, Shanghai and Shenzhen, with more than 460 lawyers practising PRC law, including 130 partners. Its key areas of practice in relation to the fintech sector are banking and finance, private equity and venture capital, investment funds and TMT. The firm provides forward-looking and practical services to cover contentious and non-contentious matters in the fintech area. It advises clients on, and provides creative solutions for, the full range of issues in the emerging fintech areas, covering onshore, offshore

and cross-border structured transactions, and encompassing a wide spectrum of sub-sectors, such as peer-to-peer, crowd-funding, micro loans, online payments, supply chain finance, blockchain applications, e-commerce, insurance and other financial service sectors with innovative technologies. The firm represents a diversified client base, including industrial giants such as Tencent, Sina, JD.com, Sogou, LinkLogis and HashKey Digital Asset Group in their fintech projects.

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