

# CHINA

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## **LAW AND PRACTICE:**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.



# Law and Practice

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**Global Law Office** is mainly based in Shanghai and Beijing, with 15 partners and 42 associates or other individuals. 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, cover-

ing 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 and Tian Ge Interactive in their FinTech projects.

### Authors



**Steven Yu** is a main partner of the FinTech, private equity and venture capital, and TMT departments. He has long focused his practice on the areas of foreign direct investment, M&A, fund formation, cross-border technology

transfer and other general corporate matters involved in a wide spectrum of industries, including machinery, chemical, logistics, consumer staples, environment service, pharmaceuticals/healthcare, clean energy, commercial property, entertainment, education and tourism. Mr Yu is admitted in China and participates in the FinTech special practice area committee.



**Vincent Wang** is a main partner of the FinTech, TMT and IP departments. His practice focuses on business operation, M&A, complex transactions, IP, industrial regulatory and compliance in the areas of new and emerging technologies (such as

artificial intelligence, blockchain, the internet of things, e-mobility and cloud computing), cyber security, privacy and data protection, telecommunication, e-commerce, electronic payments, new internet-related businesses, hi-tech manufacture and engineering, automotive, digital media and entertainment, food and beverage, agriculture and farming.

## 1. FinTech Market

### 1.1 Evolution of the FinTech Market

Over the last twelve months, the Chinese government have made serious efforts to solve the concerns over illegal fundraising in the name of FinTech. The government continues to implement a ban on initial coin offerings (ICOs), taking down the trading platforms of ICOs and various virtual currencies, and cracking down and cleaning up the peer-to-peer (P2P) lending business. It shows that the government has concerns over the implantation of new technologies for the purpose of financing and is trying to guide the adoption of the new technologies consistently with the goal of maintaining good social order in the financial sector. In other words, the government has concerns about using new technology to create new forms of financial businesses that is beyond the current regulatory regime of the industry (FinTech).

Notwithstanding the above, over the last twelve months, FinTech has attracted good attention from business and industrial users. Many efforts are being implemented to apply the new technologies to make traditional business more efficient and effective. For instance, securities broker Guotai Junan Securities has applied AI technics in its intelligence investment product that can support investment decision-making based on big data information. Ping An Bank has also launched a boutique bank using blockchain, cloud com-

puting and the internet of things. The government does not intervene in any such efforts to use new technologies to raise the efficiencies of traditional financial service.

It is anticipated that, in the next twelve months, the interest in implementing new FinTech will continue to grow and people in the industry will pay more attention to the new impacts that the new technologies may have on the existing legal and regulatory regime. With more and more efforts in adopting new FinTechs, it is also expected that the government may release more policies and circulars to guide such efforts in the financial areas. Dialogues and discussions may happen more frequently between regulators and businesses. It is also anticipated that the adoption of certain new FinTechs originally designed to innovate financial services in the Western world may find new homes in non-financial sectors in China due to Chinese governmental concern over FinTechs.

## 2. FinTech Verticals

### 2.1 Predominant Business Models

In the traditional credit card payment industry, the payment chain contains three links: the issuing bank, card networks (eg, China UnionPay) and the merchant's acquiring bank, each one of which will claim a proportion of transaction fees.

There are now newcomers in the payment industry. The e-payment companies (eg, Alipay and WeChat Pay) will handle the transaction process and interact with buyers' and sellers' banks. The payment made by the buyer (for Alipay and WeChat Pay, a customer can choose to pay from the links with a bank card or pay directly from their e-wallet balance with Alipay or WeChat Pay) will be credited to the merchant's account opened with the payment companies.

## 2.2 Regulatory Regime

China's legal system is based on the civil law system, therefore the sources of payments law is in the form of code law. Currently, it is in the form of various laws, administrative regulations, rules, policies and circulars issued by the People's Bank of China (PBOC), the central bank of the People's Republic of China, among which the most important laws and regulations include:

- the PRC Law of the People's Bank of China, adopted by the National People's Congress;
- Measures for Payment and Settlement, issued by the PBOC; and
- Administration Measures on Payment Services by Non-financial Institutions, issued by the PBOC.

## 2.3 Variations Between the Regulation of FinTech and Legacy Players

Legacy players 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. 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. Moreover, the e-payment companies are required to deposit their reserve funds in banks and shall not misappropriate any of the reserve funds without the instruction of their clients.

## 2.4 Regulatory Sandbox

Regulatory sandboxes have been introduced by the local government in several Chinese cities. The first local government-led FinTech regulatory sandbox in mainland China was initiated jointly by the local government of Ganzhou City, the National Internet Emergency Centre and some other institutional sponsors. This sandbox attracts innovative blockchain technology enterprises and internet financial companies through preferential policies.

Also, a series of related policies have been launched. For example, the Ganzhou government unites the National Internet Emergency Centre and Xinhua Net for compiling an industry guidebook, the Guideline on Blockchain Compliance.

## 2.5 Jurisdiction of Regulators

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

- the State Administration for Market Regulation and its local branches, which are in charge of FinTech companies' industrial and commercial registration;
- the Ministry of Industry and Information Technology of the People's Republic of China and its local branches, which regulate telecommunication-related services involved in the FinTech industry;
- the Cyberspace Administration of China (CAC), which regulates network safety, data safety and other relevant issues of internet information and content services involved in the FinTech industry;
- FinTech participants are also managed in accordance with laws and regulations of the financial supervision bodies – ie, the PBOC, the China Banking and Insurance Regulatory Commission (CBIRC), and the China Securities Regulatory Commission (CSRC) – if they carry out relevant financial business; and
- the Ministry of Public Security and its local branches are leading the fight against internet financial crimes.

## 2.6 Outsourcing of Regulated Functions

Several regulations have been issued in connection with IT outsourcing (eg, the Measures for Information Technology Management of Securities and Fund Operating Institutions issued by the CSRC and the Guidance on Risk Regulation of Information Technology Outsourcing in Banking Financial Institutions issued by the China Banking Regulatory Commission). Such regulations stipulate the positive and negative obligations of the vendors, which include that the vendors shall build sound internal control mechanisms and shall not intercept, forward or store the operating data or customer information of banks or securities and fund operating institutions.

A service contract and a confidentiality agreement between the operating institutions (banks, securities firms or others) and the vendors are compulsorily required under such regulations.

As most vendors are unregulated or seldom regulated by the financial supervision bodies, the vendors' information security management system construction is lagging behind, which may cause information security risks to the financial enterprises. This firm believes it is better to outsource to a regulated entity (the CSRC requires that fund operating institutions should co-operate with vendors who have been filed with the CSRC).

## 2.7 Significant Enforcement Actions

In 2016, Meituan was forced by the PBOC to suspend Meituan Pay for its lack of a third-party payment licence. In September of the same year, Meituan acquired a 100%

equity interest in the third-party payment company Qian Dai Bao, for the consideration of over CNY1 billion to obtain the third-party payment licence.

### 2.8 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-services purposes the individual information of their users.

The 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. The details will be formulated by the State Council in the future. This firm believes that cybersecurity regulations on the internet financial industry will be tightening.

### 2.9 Regulation of Social Media and Similar Tools

The use of social media and similar tools is subject to regulation. Relevant regulations 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 prohibited (eg, advertisements without risk tips and advertisements that contain a guarantee of future returns).

### 2.10 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 national 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.

### 2.11 Conjunction of Unregulated and Regulated Products and Services

Customer-directing platforms for financial products are good examples. The sale of financial products is regulated, but the provision of information is not regulated by financial supervision bodies. In such business models, platform operators enter into co-operation agreements with financial products providers who are regulated. When clicking the button shown on the interface of platforms, users are redirected automatically to the websites of the financial products providers or display pages of the financial products. The financial products 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.

## 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 trades. 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

While many emerging FinTech companies grow rapidly with their independent platforms entirely supported by robo-adviser services, legacy players in China tend to take advantage of automation by incorporating semi-automated systems into their existing platforms. For example, in December 2016, China Merchants Bank launched MachineGene Investment on its own financial service app. As another example, in April 2018, an independently developed robo-adviser project, Zhongyin Huitou, was launched by the Bank of China, which reached the transaction size of CNY4.5 billion in August that year. 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 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, the CBIRC, the CSRC and the State Administration of Foreign Exchange on 27 April 2018 provides that 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 (the Interim Measures of Online Lending Intermediaries) jointly issued by the China Banking Regulatory Commission, the Ministry of Industry and Information Technology, and the Ministry of Public Security has set the framework of regulation on online lending firms 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 for the Special Campaign against Internet Financial Risks for the Special Campaign against Peer-to-peer Lending Risks on the Regulation and Rectification of the 'Cash Loan' Business (the Cash Loan Notice) and the Implementation Plan for Special Rectification of Internet Financial Risks.

### 4.2 Underwriting Processes

In the typical underwriting process, the online lending platform acts as a broker who collects basic personal information about the borrowers, categorises the information with repayment capacity and provides lenders with such stand-

ardised information. Paipai Dai is a leading company adopting this business model.

Other underwriting models existed previously, in which the platforms act as (i) guarantors, who provide a guarantee on the repayment of loans; or (ii) 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 issued in early 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*: as the online lending business model that involves most individual participants both as borrowers and lenders, the peer-to-peer 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;
- *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, 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. A licence is required for online lending firms engaging in this type of co-operation,

according to the Interim Measures of Online Lending Intermediaries. The rationale behind the requirement is that policy-makers attempt to prevent banks from becoming pure fund-raisers and giving away their duty of due diligence of credit management.

## 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 NetsUnion.

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.

## 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.

### 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 working days.

## 7. Exchanges and Trading Platforms

### 7.1 Permissible Trading Platforms

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

- stock exchanges regulated by the CSRC, a subsidiary of the State Council;
- a bond trading market consisting of the interbank bond market, bond exchanges and commercial banks, mainly regulated by the CBIRC, a subsidiary of the State Council;
- a bill market mainly regulated by the CBIRC and the Ministry of Finance;
- 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 People's Bank of China.

### 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 crypto-currency calls for an upgrading of the technology used in regulation and innovation of legal theories to incorporate crypto-currency properly into the existing regulation system. Uncertainty regarding crypto-currency 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 crypto-currencies, illegal and shut down platforms facilitating such trades. On 24 August 2018, the CBIRC, the PBOC, the Ministry of Public Security and two other authorities jointly issued the Notice on the Risks of Illegal Fund-raising using the terms 'Crypto-currency' and 'Blockchain', warning investors against the risk of Ponzi schemes in such deals.

#### 7.4 Listing Standards

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 are 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. Recently, China has officially released a set of rules for the Science and Technology Innovation Board (STIB), a new trading platform launched in Shanghai. STIB 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 said that STIB will become China's NASDAQ exchange.

#### 7.5 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.

#### 7.6 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.

#### 7.7 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. Because 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 risk of being determined as committing that crime.

## 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 these 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 it to the regulatory authorities. If they do not do so, 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 on online platforms and various channels of marketing and soliciting are used by insurance companies.

Protecting consumers from misleading and inaccurate solicitation has been one of the issues frequently addressed by the 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 tech-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.

### 11.2 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. This firm is of the opinion 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 shall have a responsibility 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 Ministry of Industry and Information Technology, and the China Bank 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 crypto-currencies.

The above circulars substantially suppressed blockchain implementation relating to currencies and ICOs. Now, blockchain players are thinking of the implementation of blockchain as a non currency-related technology to sup-

port 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 Office of the CAC released in January 2019 a new Provisions on the Administration of Blockchain Based Information Services (the Provisions), to take effect from February 2019. The 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 the Chinese government generally bans connection between the blockchain and the financial service, blockchain cannot be used as a financial instrument.

### 12.4 Regulation of 'Issuers' of Blockchain Assets

Since ICOs of all forms are announced as illegal, no 'issuers' of blockchain assets exist lawfully 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 infor-

#### Global Law Office

26 Floor, 5 Corporate Avenue,  
150 Hubin Road,  
Huangpu District,  
Shanghai 200021,  
China



Tel: +86 21 2310 8288  
Fax: +86 21 2310 8299  
Email: shanghai@glo.com.cn  
Web: www.glo.com.cn

mation, 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 need to worry about this issue yet.