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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

The UK continues to be ranked as one of the most "fintech-friendly" countries in the world, and in 2023, was second only to the United States as the most popular destination for fintech investment globally. In this environment, a broad spectrum of fintech businesses at various stages of growth and development are represented both in London and the UK more widely. The UK's credibility as a centre for technology and innovation was arguably reinforced by the government-backed HSBC acquisition of Silicon Valley Bank's UK operations in 2023.

The UK is continuing to drive forward the recommendations made in an independent fintech strategic review, led by Ron Kalifa OBE (former CEO of Worldpay), and published in February 2021. For example, in the past year, the UK's FinTech Growth Fund came into being, which is looking to undertake around four to eight investments in growth-stage FinTechs per year of between £10 million and £100 million.

The UK was an early adopter of payments technology, and this market has now reached a degree of maturity. In April 2023, it was reported that more than seven million customers were using Open Banking-enabled products and services to manage their money and make payments, and that there had been over 68 million Open Banking payments made in 2022 (a significant step up from 25 million in 2021). The next phase of Open Banking includes plans to enable Open Banking payments to support retail transactions as an alternative to card payments, fostering competition and choice. Meanwhile, the Centre for Finance, Innovation and Technology (CFIT, founded further to the Kalifa review), has launched an Open Finance coalition. This coalition will explore extending Open Banking-like data sharing to a wider range of products in order to deliver its overarching mission to scale the UK fintech sector.

Big data continues to play an important role both for start-ups and established financial services firms. Following on from the launch of its National AI Strategy in September 2021, the UK government has been working to develop a sector- and context-specific regulatory framework for AI based on five cross-sectoral principles, and underpinned by centralised resources (for example, the government has established an AI Safety Institute with the aim of advancing AI safety for the public interest (see further under question 4.6)). In parallel, the financial services regulators (the Bank of England, Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA)) have been seeking to establish whether the existing regulatory regime is sufficient to manage and mitigate the potential risks posed by AI, or whether supplementation is required. They will have to apply the AI principles, and the UK government have asked them to publish their approach to AI Regulation in light of the new UK framework by 30 April 2024.

Distributed ledger technologies (DLT) continue to emerge in diverse sectors across the UK. While investment and trading in cryptoassets have been dampened by recent turbulence in the cryptomarkets that emerged in 2022 (auguring a "cryptowinter"), recent surveys indicate that 5–10% of UK adults now own cryptoassets, and the price of popular cryptocurrency Bitcoin reached new highs in 2024. The UK government continues to explore whether a retail central bank digital currency (CBDC), the "digital pound", would benefit the UK economy.

The UK is widely acknowledged as a world leader in the creation of new forms of crowdfunding, and that market continues to grow, driven by companies such as Seedrs and Crowdcube.

Both fintech and ESG are high on the UK government's agenda, and there are likely to be crossovers as the UK seeks to implement net-zero emissions whilst remaining a thriving space for innovation and technology. Fintech businesses are among the founding members of the TechZero charter, a climate action group for UK technology companies working together to accelerate progress towards net-zero emissions. In 2022, the FCA, in collaboration with the City of London Corporation, ran a second digital sandbox pilot focusing on solving the regulatory challenges related to new products and services in the areas of ESG data and disclosure.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

There are currently no prohibitions or restrictions that are specific to fintech businesses in the UK. Depending on the nature of the business, fintechs may need to be regulated in the same way as other traditional financial services firms.

That being said, the FCA has prohibited the marketing, distribution or sale (in or from the UK) to all retail clients of any derivatives and exchange-traded notes (ETNs) that have referenced certain types of unregulated, transferable cryptoassets since 6 January 2021.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) require all cryptoasset exchanges and custodian cryptowallet providers to comply with anti-money laundering (AML) requirements, including registering with the FCA, and implementing identity and other AML checks. This has presented a challenge for certain cryptoasset firms, and the FCA confirmed in March 2024 that only 14% of cryptoasset business applicants have successfully achieved MLR registration with the FCA since January 2020.

We note that, in the past year, HM Treasury has brought the promotion of certain unregulated cryptoassets within the scope of the financial promotions regime, and is in the process of expanding the regulatory perimeter to encompass a broader range of cryptoasset activities. The annexation of activities which issue or facilitate the use of fiat-backed stablecoins as a means of payment will mark the first stage of this process, and secondary legislation enabling this change is expected later in 2024. See question 3.2 for further details of the UK legal and regulatory approach to cryptocurrencies.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

The UK has mature debt and equity capital markets accessible to businesses above a certain size. Raising finance through an initial public offering (IPO) has typically been a popular avenue for fintech businesses (high-profile recent examples include Wise, PensionBee, LendInvest and Eurowag), but the last year has been marked by a dearth of such IPOs in the UK (as is also the case elsewhere). A notable exception, the listing of CAB Payments in July 2023, was marred by its own complications. Several factors have contributed to this, most notably the depression in valuations (amongst start-ups more broadly) since 2021, which is itself symptomatic of other (largely macroeconomic) causes. Fortunately for growth-stage or less mature fintech businesses without access to public markets, there are a number of other funding sources (both equity and debt) available in the UK.

However, optimism remains. Fintechs are viewed by some as offering the key to unlocking London's public markets. A number of fintechs, most notably neobanks, have weathered the storm and appear set to enter public markets in the coming years. The regulatory landscape is adapting to create a more hospitable environment for such businesses to float.

The Kalifa Review, centred on UK fintech, led to the institution of new rules for listing companies in December 2021. A targeted form of dual-class share structures within the premium listing segment was introduced, which is particularly appealing for innovative, founder-led companies. The "free float" requirement (the amount of shares an issuer is required to have in public hands) was also reduced from 25% to 10%, as was the minimum market capitalisation threshold (which traditionally favoured more mature, scaled businesses).

Perhaps even more significantly, in May 2023, major reforms to the listing regime in the UK were proposed by the FCA. The reforms include merging the "Premium" and "Standard" listing segments into a new, consolidated category, altering the significant transactions regime, rationalising the rules on related party transactions, and amending dual-share class structures. The main goal of the reforms, which are the most far-reaching for two decades, is to encourage a broader pool of companies to list on the London Stock Exchange, by relaxing certain eligibility criteria and continuing obligations. Following an extensive consultation process, the reforms are expected to come into effect in the second half of 2024.

Equity

Early-stage venture capital funding – before it is possible to put a valuation on a company – is often done through a form of convertible loan note (CLN). The CLN becomes convertible into equity on the occurrence of certain events, such as a material funding round, an exit or an IPO, usually at a discount to the value per share applied by such event. An alternative to the CLN, structured so as to qualify for certain tax reliefs, is the advanced subscription agreement, whereby the investor subscribes for future equity determined by reference to the relevant trigger event.

As a fintech matures, similarly to other start-ups, it will typically undergo a series of equity fundraisings (seed funding, Series A, Series B and so on).

Many start-ups saw a reset in valuations after 2021, caused primarily by high inflation, the increased cost of living and geopolitical turbulence. This resulted in a number of "down rounds" (an equity raise undertaken at a discount compared to the company's prior raise), particularly amongst technology firms.

There have been several high profile fintech equity raises in recent years. Notably, notwithstanding the valuation reset, Monzo Bank announced in March 2024 that it had completed a £340 million funding round led by CapitalG, Alphabet's independent growth fund. The equity raise saw Monzo Bank increase its valuation from £3.5 billion in 2021 to £4 billion, and is considered by many to represent a vote of confidence in the UK fintech market.

Crowdfunding continues to grow in popularity in the UK for start-up businesses. In particular, it offers private investors an opportunity to invest in early-stage businesses, which would previously have only been accessible to business angels or venture capitalists, through platforms such as Crowdcude and Seedrs. Many fintech start-ups have combined crowdfunding finance with finance raised from more traditional sources, such as from venture capital and business angels. Incubators, which generally offer facilities and funding for start-ups in return for an equity stake, are also increasingly prevalent in the UK, and may present an attractive option to small and growing fintech businesses.

The advent of the UK's FinTech Growth Fund in 2023 (as recommended in the Kalifa Review), which has the backing of Mastercard, Barclays and the London Stock Exchange Group, is intended to help the UK fintech sector continue to compete on a global level and remain a powerhouse in Europe. The FinTech Growth Fund has a mandate to invest in businesses from Series B through to pre-IPO.

Debt

Small fintechs often do not have recourse to "traditional" bank loans, and have therefore relied on a number of more tech-focused banks. The landscape shifted in March 2023 following the collapse of Silicon Valley Bank UK (SVB), perhaps the most active of such banks. Nonetheless, debt funding continues to be available to fintechs and start-ups more broadly. The market has seen an increase in competition and a bifurcation between early-stage and late- or growth-stage lending, but no natural successor to SVB has yet presented itself. Other tech-focused banks, such as OakNorth Bank, continue to provide debt finance to technology start-ups.

There are also numerous peer-to-peer lending platforms and invoice financing firms operating in the UK, which provide alternative sources of debt finance to small and growing businesses.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

The UK government offers various tax incentives for investment in start-ups. Generally speaking, these incentives are not specific to the tech or fintech sectors and are available to qualifying companies and investors in all sectors.

These include the Seed Enterprise Investment Scheme (SEIS), which offers a 50% income tax relief for UK taxpayers investing up to £200,000 in qualifying start-ups. To qualify for SEIS, following reforms introduced in 2023, a company must (among other qualifying criteria) be no more than three years old, have less than £350,000 in gross assets and have fewer than 25 employees. This complements the Enterprise Investment Scheme (EIS), which offers tax relief for investment in more mature companies (though the tax relief available under the EIS is 30%). Equivalent relief is also applicable if an investment is made through a venture capital trust (VCT).

In addition, R&D tax credits are available in the UK. However, the scheme is undergoing a simplification process in order to bring the UK closer in line with other countries. After April 2024, there will be a new single R&D tax relief scheme for all businesses (including large organisations as well as SMEs).

To assist companies in attracting and retaining top talent, the Enterprise Management Incentives Scheme (EMIs) is also available. Companies with assets of £30 million or less may be eligible, and as a result are able to grant share options up to the value of £250,000 in a three-year period with certain tax breaks.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The precise conditions depend on the type of listing and the market on which the shares will be listed.

Currently, in summary, a standard listing on the main market of the London Stock Exchange would require compliance with the following key requirements:

- The company must be duly incorporated, validly existing and operating in conformity with its constitution, and its shares must comply with the laws of the company's place of incorporation, be duly authorised, and have all necessary statutory and other consents.
- The company's shares must be freely transferable and free from any restrictions on the right of transfer.
- The company must have an expected aggregate market value of at least £30 million.
- The company must publish an approved prospectus.
- At least 10% of the shares must be held by the public at the time of admission.

However, changes to the eligibility requirements are included in the FCA's reforms. The above requirements will continue to apply under the new rules to the "equity shares in commercial companies" category (which is intended to replace both the standard and premium listing segments), but the rules for such category are overall less stringent than for a premium listing under the current regime. For example, it is anticipated that the new rules will remove the requirements to: (i) provide historical financial information; (ii) provide a three-year revenue track record; (iii) demonstrate that the applicant carries on an independent business as its main activity and retains operational control over that business; and (iv) provide a clean working capital statement.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

According to data from Dealroom, the UK start-up ecosystem is now worth over \$1.1 trillion, making it the third most valuable ecosystem globally, and also ranks third globally for venture capital investment. It is home to over 150 "unicorns" (a startup company valued at over \$1 billion), over 200 "futurecorns" (high-growth tech companies that are predicted to reach the \$1 billion mark in the future), and more than 25,000 funded start-ups. There is potential for a number of UK firms to embark on an IPO in the upcoming year, including Klarna, Starling and Zopa.

The CAB Payments IPO was the most notable exit in 2023, but the focus of the last year has, primarily, been on investment in fintech. According to Dealroom, fintech was within the top three UK industries for VC investment calculated by reference to total investment raised in 2023.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

There is no specific regulatory framework for fintech businesses, which are subject to the existing body of UK financial regulation. Fintech firms will fall within the regulatory perimeter if they carry on certain regulated activities (specified in legislation) by way of business in the UK and do not fall within the scope of an exemption. This regulatory perimeter covers "traditional" financial services, such as provision of banking, consumer credit and insurance services, as well as certain areas more typically associated with fintech start-ups, such as crowdfunding. The perimeter is set to expand, moreover, to encompass a wide range of cryptoasset activities where these mirror, or closely resemble, regulated activities performed in traditional financial services. See question 3.2 below.

It is important to note that just because a firm regards itself as more "tech" than "fin", this does not necessarily mean that it will escape regulation; many activities that might be regarded as mere technological services can fall within the scope of the regulatory perimeter. Indeed, the provision, or operation, of technology and financial regulation is becoming increasingly enmeshed in certain contexts. A recent example of this trend can be found in an incoming regime created to regulate certain services provided by "critical" third parties, such as cloud service and other ICT service providers, or financial services and financial market infrastructure firms. The FCA is also keeping an eye on the activities of Big Tech firms operating at the boundary or outside the regulatory perimeter, in addition to monitoring the increasing participation of Big Tech firms in retail financial services.

A firm that wishes to undertake regulated activities in the UK will need to apply for authorisation from one of the UK's financial regulators, the FCA or the PRA. Once authorised, those firms will be subject to a range of additional primary legislation, as well as detailed (and in some cases, activity-specific) rulebooks published by the FCA and the PRA.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Across 2023, the government finalised its vision for the future financial services regulatory regime for cryptoassets. The government has confirmed that it will introduce a number of new regulated or designated activities tailored to the cryptoasset market into the existing regime under the Financial Services and Markets Act 2000 (FSMA). These activities include cryptoasset custody and issuance, as well as operating a cryptoasset trading venue. They will be brought within FSMA on a phased basis, prioritising activities relating to fiat-backed stablecoins. Secondary legislation to this effect is expected be introduced across 2024.

This absorption of cryptoasset activities within FSMA heralds the winding up of the registration regime which has existed for cryptoasset exchange providers and custodian wallet providers under the MLRs since January 2020. It expands on a regulatory approach which has (broadly) sought to regulate cryptoassets by reference to existing regulatory regimes; for example, at present, cryptoassets which amount to "e-money" may be regulated under the UK's E-Money Regulations, and the UK's Payment Services Regulations. FSMA further builds on legislation which brought the majority of cryptoasset financial promotions within the UK's financial promotions regime with effect from 8 October 2023. In other words, the UK is well on its way towards building a more cohesive regulatory framework for cryptoassets.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

UK financial regulators and policy-makers continue to be receptive to fintech. Both the government and industry are pursuing a range of recommendations made in the Kalifa Review, with a view to ensuring that "the UK maintains its global leadership in this vital sector". This support for innovation has been matched by regulatory action to protect consumers and markets where deemed necessary.

The favourable political environment has influenced the approach of the PRA and the FCA. In particular, the FCA is generally regarded as one of the most forward-thinking regulators in the world in this area, and hosts several sandbox initiatives to support financial services firms in their innovation. For instance, the FCA's Regulatory Sandbox allows businesses to test innovative products, services, business models and delivery mechanisms with real consumers in a controlled environment, and its Digital Sandbox offers GDPR-compliant datasets in a secure environment, mentorship from industry experts, and access to the FinTech community to enable experimentation and scaling for proof of concepts. The FCA's use of such tools is evolving in step with technological developments. For example, in 2024 the FCA and Bank of England will run a newly established Digital Securities Sandbox targeted at financial market infrastructure firms, which is intended to facilitate the use of digital assets in financial markets. The FCA's AI Sandbox will also be opening to firms in 2024.

The Bank of England has a Fintech Hub through which it seeks to understand what fintech means for the stability of the financial system, the safety and soundness of financial firms and its ability to perform its operational and regulatory roles. The Bank also has an active regulatory technology agenda and has been engaged in a dialogue on the appropriate design of a central bank digital currency.

The UK's Information Commissioner's Office (ICO), the main data privacy regulator in the UK, launched a sandbox in March 2019 to support organisations in developing innovative products and services, using personal data in different ways, and the Digital Regulatory Co-operation Forum (DRCF) has also launched a joint advisory service. The DRCF is made up of the ICO, FCA, competition authority (CMA) and media regulator (OFCOM) to ensure greater regulatory co-ordination and cooperation on online regulatory matters.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Where a fintech firm wishes to perform regulated activities in the UK, it will need to consider whether it requires authorisation to do so. It is important to note that a person does not need to be established in the UK in order to carry out regulated activities in the UK – a fintech business based overseas that deals with customers in the UK is likely to be viewed as carrying on activities in the UK. Where an overseas fintech firm performs regulated activities in the UK, it will need to obtain authorisation from the UK financial regulators (as described further in our answer to question 3.1 above) or rely on an exemption to the authorisation regime.

There are numerous exemptions to the performance of regulated activities, some of general application and others associated with specific activities. Application of these exemptions is, of course, fact dependent, but it is worth noting that one exemption – the "overseas person exemption" – is specifically targeted at firms established outside the UK. This exemption is, however, restrictive in scope, applying only to certain activities and where there is direct involvement of an authorised or exempt firm in the performance of the activity or a "legitimate approach" by an overseas person (e.g. an approach that does not breach the UK's financial promotions regime). There are ongoing plans to review the scope of the overseas perimeter and whether it remains appropriate for the UK.

Overseas fintech firms should also have regard to the UK financial promotions regime under which firms are not permitted, in the course of business, to communicate (or cause to be communicated) an invitation or inducement to engage in investment activity, unless that person is authorised or the communication falls within the scope of an exemption. As with regulated activities, one such exemption relates to overseas communicators.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Following the end of the Brexit transition period on 31 December

2020, the UK effectively "onshored" the EU's General Data Protection Regulation (the EU GDPR) onto UK law, with certain modifications to ensure that the onshored legislation would operate effectively in the UK (the UK GDPR). The UK GDPR, supplemented by the Data Protection Act 2018 (DPA 2018), regulates the processing of personal data and special category data and applies to fintech organisations established in the UK. However, the UK GDPR has extra-territorial effect and may also apply to some fintech organisations established outside the UK (see question 4.2 below). For now, the UK and EU GDPR are broadly aligned, and have equivalent extra-territorial application, but divergences in enforcement approaches and in the interpretation of the rules on international transfers are becoming apparent. Fintech organisations will need to assess which (or both) of the regimes apply to the processing of any given personal data.

Processing is defined widely to cover any operation performed on personal data, including collecting, storing or destroying that data. Fintech organisations caught by the UK GDPR can be controllers, joint controllers or processors. Under the UK GDPR:

- "controllers" are those organisations which process personal data and determine the purpose and means of such processing;
- "joint controllers" are two or more controllers that jointly determine the purposes and means of processing; and
- "processors" include service providers and other persons which process personal data on behalf of a controller.

The UK GDPR follows a principles-based approach: those processing personal data must comply with a set of principles (for example, personal data must be processed fairly, lawfully, transparently and securely) and need a "lawful basis" for the processing (for example, consent). The UK GDPR requires high standards of privacy compliance, including mandatory breach notification provisions, implementing data protection by design and default, and complying with accountability requirements.

The DPA 2018 includes a number of exemptions, provisions relating to international transfers and detail on the ICO's enforcement powers. It also covers areas (such as law enforcement and processing by the intelligence services) that were not previously covered by the EU GDPR. In addition, the Data Protection (Charges and Information) Regulations 2018 impose a data protection fee of between £40 and £2,900 on data controllers (depending on the size and type of organisation, unless they are exempt).

Unsolicited direct marketing by electronic means is covered by both the UK data protection regime and the Privacy and Electronic Communications Regulations 2003 (PECR), which implemented the EU Directive. A new ePrivacy Regulation, to replace this Directive, is currently being negotiated at an EU level, but it is unclear when it may be finalised and whether the UK will choose to enact similar or equivalent provisions.

On 8 March 2023, the Data Protection and Digital Information (No. 2) Bill was laid before Parliament, largely replicating the previous draft Bill proposed in July 2022. The Bill does not fundamentally alter data privacy laws in the UK but aims to update and simplify the UK's current framework so as to reduce burdens on organisations while maintaining high data protection standards. The UK government has stated that it hopes the Bill will be passed within the year, and with minimal amendment.

Sector-specific regulators, including those in the finance sector, also regulate the use of data by organisations that fall within their remit.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The UK GDPR has a wide extra-territorial reach, applying to any controllers and processors established outside the EU that offer goods or services to individuals in the UK, or monitor their behaviour in the UK.

The UK GDPR also restricts the transfer of personal data outside the UK unless adequate protection is in place. Under the UK GDPR and the DPA 2018, a number of jurisdictions have been approved as being "adequate", including all the EEA Member States and the territories having the benefit of an adequacy decision from the EU Commission under the EU GDPR. If there is no formal adequacy decision in place for a jurisdiction, other mechanisms set out in the UK GDPR and the DPA 2018 may be relied on to transfer personal data out of the UK. These include, among other things, using "approved form" standard contractual clauses relating to data export, or obtaining consent from the individual whose data is being transferred.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

There are a range of sanctions available, including the following:

- Large fines – the UK regulator, the ICO, can impose fines on controllers and/or processors of up to 4% of their annual worldwide turnover, or £17.5 million (whichever is greater).
- Criminal liability – the DPA 2018 includes a number of criminal offences; for example, knowingly or recklessly obtaining or disclosing personal data without the controller's consent. Directors, managers and officers can (in certain circumstances) be held personally liable for offences by corporations.
- Damages claims – individuals who have suffered as a result of infringement of the UK GDPR may be entitled to compensation. There is also the potential for representative and group actions in certain circumstances.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

There are a variety of laws and regulations that could apply following a cyber breach in the UK, and many of them were originally derived from EU legislation. For example:

- data protection rules (for example, around security and breach notification) will apply where personal data is involved (see question 3.4 above);
- the Computer Misuse Act 1990, which is currently under review, creates a number of cyber-crime offences relating to actions such as unauthorised access or interference with a computer and DDoS attacks; and
- the Product Security and Telecommunications Infrastructure Act 2022, creates, amongst other things, a new regulatory regime to make consumer connectable devices and products more secure.

Sector-specific rules may also apply. For example: (i) fintech businesses that are telecoms operators or internet service providers (ISPs) may face action from the ICO for breach of the PECR; and (ii) FCA rules may apply in the financial services sector (see below). The UK also has laws relating to the interception of communications and the ability of public bodies to carry out surveillance, although they are beyond the scope of this chapter.

Cyber continues to be a regulatory priority for the FCA, which has responsibility under FSMA to take regulatory action to counter financial crime. The FCA launched the Cyber Coordination Group (CCG) programme in 2017 bringing together cyber-security and technology risk leaders from the industry and connecting them with the authorities responsible for cyber resilience across the financial sector. Authorised firms are expected to report material cyber incidents to the FCA.

The UK's National Cyber Security Centre also provides cyber support for organisations, produces guidance (including on specific risks such as the Ukraine crisis, ransomware and supply chain risk) and offers various certification schemes.

Please note that the UK Network and Information Systems Regulations 2018 do not apply to most UK fintech organisations. Although the EU Directive on which the Regulations are based imposes security requirements and incident notification obligations on banks and financial markets, the UK government excluded the finance sector from the list of relevant sectors when implementing the Directive into UK law (as it considered this area to be sufficiently regulated). The regime has since, however, undergone a review resulting in changes. For example, managed IT service providers are being brought in scope. This review was one of a number of actions that came out of the UK's new Cyber Strategy, which was published in December 2021.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Financial crime is governed in the UK by a range of legislation. The key piece of AML legislation is the Proceeds of Crime Act 2002 (POCA), which sets out the principal money-laundering offences, including concealing, disguising, converting or transferring the proceeds of crime. There are also various "secondary" offences, which include the tipping off of persons engaged in money laundering to any investigation.

Firms operating in the regulated sector, including fintech firms, must comply with the MLRs, which back up the provisions in POCA. These set out detailed requirements in respect of customer due diligence and AML policies and procedures, aligning the UK regime with the Financial Action Task Force's international standards, and designating the FCA as the AML and counter-terrorist financing supervisor in relation to certain cryptoasset businesses.

The FCA specifies additional rules in respect of anti-financial crime systems and controls in its Handbook, which applies to authorised firms. Both the PRA and the FCA regard adoption of rigorous and robust anti-financial crime systems and controls as essential to meeting the ongoing regulatory requirements of being an authorised firm.

The Bribery Act 2010 (BA) is the UK's anti-bribery legislation. The BA is generally regarded as rigorous and onerous by worldwide standards, and specifies offences in respect of bribing another person, being bribed, bribery of foreign public officials and a corporate bribery offence relating to the failure of commercial organisations to prevent bribery. As with the basic AML offences in POCA, the BA applies generally to any entity doing business in the UK.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction (for example, AI)?

Please refer to our comments above on the UK data protection regime and cyber-security laws or regulations. There is no legislation in the UK that is aimed specifically at the fintech sector.

In relation to AI, the UK government's 2021 National AI Strategy confirmed that the UK would publish a white paper setting out its "pro innovation" position on regulating AI in 2022. Although this paper has not yet been released, an interim policy paper was published in July 2022, which suggested that the UK should maintain its current sector-specific approach, but introduce six core principles which all regulators would apply.

Any additional regulatory regimes would likely be specific to the sector in which a particular fintech firm operates. The FCA, Bank of England and PRA have a particular interest in the safe and responsible adoption of AI in financial services, which includes considering how policy and regulation can best support it. More specifically, these regulators continue to examine (including through the publication of a joint Discussion Paper (DP22/4), which closed to comments in February 2023) whether AI in UK financial markets can be managed through clarifications of the existing regulatory framework, or whether a new approach is needed.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

Subject to the mandatory benefits referred to in question 5.2 below, individuals can generally be hired on whatever terms are considered appropriate. When hiring, it is important to bear in mind that the prohibition of discrimination in employment applies to everything from job advertisement, candidate selection and recruitment, to employment terms and reasons for dismissal. Unlike most other employment-related claims, compensation for discrimination is uncapped.

Under UK law, the term "dismissal" incorporates employer terminations, expiry of fixed-term contracts and constructive dismissals (where the employee resigns and treats himself as dismissed due to a repudiatory breach by the employer).

Broadly, employees with two years' service can claim unfair dismissal if a dismissal: (i) does not fall within one of five fair reasons (such as conduct, capability or redundancy); (ii) does not follow a fair procedure (including compliance with relevant codes of practice); or (iii) is not fair and reasonable considering all the circumstances, including the employer's size and resources. Remedies include compensation (subject to statutory caps), and in limited circumstances, reinstatement or re-engagement. Dismissals for certain reasons (such as whistleblowing) are automatically unfair; they do not require a qualifying period of employment, and compensation is uncapped.

Except in cases of gross misconduct or other repudiatory breach, dismissing an employee without the required notice period (or payment *in lieu*, where permitted under the contract) generally leads to a wrongful dismissal, allowing the employee to claim for loss of earnings that he/she would have received during the notice period.

5.2 What, if any, mandatory employment benefits must be provided to staff?

Employers must pay all workers at least the specified national minimum/living wage, and must contribute to the state pension and health system on the workers' behalf. In addition, eligible jobholders must be automatically enrolled into a personal or occupational pension scheme meeting certain minimum requirements (unless they opt out).

All workers are entitled to at least 28 paid days of annual leave (which includes public holidays and is pro-rated for part-time workers), as well as specified minimum daily and weekly rest periods. Shifts longer than six hours must usually also include breaks. Workers may not work more than 48 hours per week averaged over 17 weeks, unless they opt out of the 48-hour limit (which is very common in practice).

Employees who are unfit for work may be entitled to statutory sick pay after the third day of absence, although employment contracts often provide for more generous company sick pay. Special rules apply in respect of the minimum periods of leave and pay for employees taking maternity, paternity, adoption or shared parental leave and certain other family or study-related types of leave.

Bonuses, which are typically linked to performance criteria, are often non-contractual or involve discretion if included in the contract. Many companies also offer share incentives to their employees.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

Following Brexit, free movement rights of EEA and Swiss nationals ended on 1 January 2021. EEA and Swiss nationals (and qualifying family members) residing in the UK before 1 January 2021 may remain and work in the UK, if they have secured their immigration status under the EU Settlement Scheme.

A new points-based immigration system was introduced in the UK on 1 December 2020, and since 1 January 2021 the same scheme has also applied to EEA and Swiss nationals. All migrants are now subject to the same tiered points-based system and (with some exceptions) must be sponsored by an employer and pass a points assessment. Minimum skill and salary levels apply, and workers must typically satisfy minimum English language skills and maintenance requirements. The most popular immigration route used by fintech businesses in the UK is currently the "global talent" route, which is for exceptionally talented or promising individuals in certain fields (including digital technology) who wish to come to the UK to work. Unlike many of the other routes, this does not require the business to hold a sponsor licence (see below). There is also a new "scale-up" route, which was opened in August 2022, to allow a broader range of workers to come to the UK to do eligible jobs for fast-growing UK businesses, including in the fintech sector. Although there are advantages both to the business and the individual of using this route, there are also eligibility conditions that must be satisfied; it remains to be seen how popular this will prove within fintech. The system also incorporates a skilled worker route (which is another popular category used by fintech businesses) and allows for a transfer of overseas employees to UK companies within the same corporate group in some circumstances.

Businesses wishing to employ overseas workers must typically obtain a sponsor licence, allowing them to issue certificates of sponsorship to migrants (there are exceptions where the migrant holds a global talent or scale-up visa). Sponsors must comply with various requirements, including conducting right-to-work checks, complying with record-keeping duties and reporting certain employee events to the authorities. Sponsors are rated based on their compliance – if a sponsor's rating is downgraded below a certain threshold, it is not able to issue new certificates of sponsorship (but can usually still sponsor extensions for its existing workers).

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions can be protected in the UK by various different IP rights. Copyright and patents are of particular relevance to the fintech sector, but other IP rights such as database rights, as well as the law of confidentiality, can also play a part.

- **Patents**: Patents are the most common way to protect inventions in the UK and provide the owner with a 20-year monopoly right. They are registered rights and therefore need to be registered before they become effective. In order to be patentable, an invention must be new, involve an inventive step, be capable of industrial application and not be excluded from protection under the Patents Act 1977. Of particular relevance to the fintech sector, computer programs, business methods and mathematical methods are not patentable in the UK, unless they possess a technical character. What gives these things the required technical character is often difficult to determine, but the English courts have implemented certain tests and signposts to assist with the analysis. The approach taken also varies across jurisdictions and between the UK and the European Patent Office.
- **Copyright**: Copyright is an unregistered right which protects various different categories of "work" in the UK. These include literary, dramatic, musical and artistic works, as well as other types of work such as films, sound recordings, broadcasts and typographical arrangements. Of particular importance to the fintech sector, computer programs (both object code and source code) are protected as literary works. Other elements that are produced when a computer program is running, such as screen displays, graphics and sound effects are also protectable by copyright.
- **Database right**: There are two different types of protection available for databases in the UK: (i) copyright, which protects the structure of the database; and (ii) *sui generis* database right, which protects the data or content stored in the database. A database will be protected by copyright if, by reason of the selection or arrangement of the contents of the database, the database constitutes the author's own intellectual creation. A database will be protected by the *sui generis* right if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.
- **Confidentiality**: The laws of confidentiality and trade secrets can also be used to protect inventions and innovations in appropriate cases. Almost any type of information can be protected by the law of confidentiality, provided that it remains confidential. This includes details of inventions that may not be patentable, as well as things like software source code. Where a fintech business is unable to obtain a patent for an innovation or invention (e.g. for a particular computer program), confidentiality or trade secrets can be a good way of seeking to prevent third parties from copying that invention or innovation.
- **Trade marks**: The branding of fintech companies, as well as individual products and services, may be protected by registered and unregistered trade marks. Registered trade marks can be applied for and registered in the UK at the UK Intellectual Property Office (UK IPO). Unregistered trade mark rights may be enforceable through the English courts under the law of passing off.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

The rules on ownership of IP vary and depend upon the context in which they are created. A high-level summary of the position for each type of IP right mentioned above is set out below.

- **Copyright**: The basic position is that the author of the work will be the first owner of any copyright in it. In most cases, the author is the person who creates the work. However, for computer-generated works, the author will be the person who undertakes the arrangements necessary for the creation of the work. If a copyright work is created by an employee during the course of their employment, copyright will generally belong to the employer. Where, however, a business commissions a third party to develop works on its behalf, then the third-party contractor will own the resulting copyright unless the copyright has been assigned by written agreement to the commissioning business. There are many debates at national and international level in relation to how copyright is impacted by the use of AI technologies.
- **Patents**: As registered rights, patents need to be applied for and registered before they become effective. Any person can apply for a patent, but only certain people are entitled to be granted one. Entitlement primarily rests with the inventor, however, similar to copyright, if the invention is made by an employee during the course of their employment, then the rights to the patent will generally belong to the employer. There are also statutory provisions for compensation to employees for patents which are of outstanding benefit to the employer. As with copyright, there are many debates at national and international level in relation to what role, if any, the patent system should play in encouraging the development and use of AI technologies. The UK Supreme Court has, however, recently confirmed that a computer (AI algorithm) cannot be an "inventor" for UK patent purposes.
- **Trade marks**: Generally, the person who applied for and registered the trade mark is the first owner of that trade mark.
- ***Sui generis* database rights**: The first owner of *sui generis* database rights will be the "maker" of the database, that is, the person who took the initiative in obtaining, verifying or presenting the contents of the database and who assumed the risk of investing in the same. As with patents and copyright, in an employment scenario, the rights will generally belong to the employer (absent an agreement to the contrary).

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

As IP rights are territorial rights, in the majority of cases, local rights will be needed to ensure protection in the UK. The main exception is for copyright, where international copyright conventions (such as the Berne Convention) provide automatic reciprocal protection in the UK and overseas for qualifying works. The WIPO Copyright Treaty, which is a special agreement under the Berne Convention, particularly deals with protection of copyright for software and databases.

Patent protection in the UK may be obtained by (1) the national UK route, (2) the European patent system (EPC), or (3) the international patent system (PCT). The UK is not participating in the Unitary Patent and the centralised enforcement system of the Unified Patent Court. UK patents (including UK designations of European patents or international patents) will be needed in order to enforce patent rights in the UK.

Trade mark protection in the UK may be obtained by (1) the national UK route, or (2) the international Madrid System (designating the UK). EU trade marks no longer have effect in the UK. As a result, UK trade marks (including UK designations of international trade marks) will be needed in order to enforce trade mark rights in the UK.

Prior to Brexit, *sui generis* database right protection (see question 6.2 above) could be obtained at the EU level and enforced in the UK. However, EU-wide database rights no longer provide protection in the UK for databases created after 1 January 2021. Instead, UK entities can now obtain an equivalent UK-specific database right which offers equivalent protection. Owners of EU-wide database rights that came into effect before 1 January 2021 were automatically granted an equivalent UK right.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP is usually exploited/monetised by assignment (transfer), licensing and granting security interests.

- **Assignment**: Generally, the assignment of an IP right must be in writing and signed. However, if the whole of a business is transferred, then its registered trade marks are also automatically transferred, except where there is an agreement to the contrary, or circumstances clearly dictate otherwise. Copyright assignments do not need to be registered in the UK. Assignments of UK patents and registered trade marks must be registered as soon as practicable with the UK IPO so as to maintain priority against later third-party interests, and within six months of the date of the transaction to maintain a right to costs for infringement proceedings relating to conduct before registration.
- **Licences**: Exclusive copyright licences must be in writing and signed by, or on behalf of, the copyright owner if the licensee wishes to maintain standing to sue for infringement (non-exclusive copyright licences can be oral or in writing). Patent licences are not required to be in writing or to be signed, but it is advisable in order to clarify terms and assist with registration with the UK IPO. Trade mark licences must be in writing and signed by the licensor, and should ideally be registered with the UK IPO. It should also be noted that the licensing of IP rights (particularly patents) can give rise to competition issues, so care must be taken.
- **Security interests**: IP rights can be used as security for finance. Details of the security interest (such as mortgage or charge) must be registered with UK Companies House within 21 days of its creation otherwise it will be void against a liquidator, administrator and any creditors of the business. Mortgages (which usually take effect as an assignment and licence back) and charges of UK patents and registered trade marks should also be registered with the UK IPO as soon as possible after the transaction, and in any event within six months.

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Slaughter and May is a global law firm headquartered in London. Our tier one-ranked fintech and emerging technology practice supports clients from across the digital financial services spectrum, ranging from established financial institutions and global technology and telecoms providers, to investors, entrepreneurs, and high-growth start-ups. We advise our clients on the legal implications of developments, innovation and growth in digital financial services.

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