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Fintech 2021

A practical cross-border insight into fintech law

Fifth Edition

Featuring contributions from:

A&L Goodbody
Advokatfirmaet BAHR AS
Afridi & Angell
Anderson Mōri & Tomotsune
Appleby
Astana International Financial Centre (AIFC)
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Jonathan Cardenas, Chair, Financial Services Technology Joint Subcommittee
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Shearman & Sterling LLP
Shearn Delamore & Co.
Slaughter and May
Triay Lawyers
Udo Udoma & Belo-Osagie
Uría Menéndez
Uría Menéndez – Proença de Carvalho
VD Law Group
Walalangi & Partners (in association with Nishimura & Asahi)

ICLG.com

Expert Analysis Chapters

Q&A Chapters

Digital Edition Chapter

United Kingdom


Rob Sumroy


Ben Kingsley


Natalie Donovan


Selmin Hakki

Slaughter and May

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. 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)?

London continues to be ranked as one of the most 'fintech-friendly' cities in the world and, as such, a broad spectrum of fintech business is represented both in London and the UK more widely.

It is too early to say whether and to what extent the end of the Brexit transition period will affect the UK's position as a leader in financial innovation. On 26 February 2021, the UK government published the results of an independent fintech strategic review led by Ron Kalifa OBE, former CEO of Worldpay, which established priority areas for industry, policy-makers and regulators to explore in order to support the ongoing success of the UK fintech sector.

The UK was an early adopter of payments technology and this market has now reached a degree of maturity. The legislation that enabled Open Banking (a secure set of technologies and standards that allow customers to give companies other than their bank or building society permission to access their accounts securely) took effect at the beginning of 2018. Implementation is now in its final stages, with increasing numbers of UK customers now using the technology. The UK financial regulator, the Financial Conduct Authority (FCA), continues to explore the potential of Open Finance, which would extend the principles of Open Banking to allow customers and businesses more control over a wide range of their financial data. Big Data continues to be an important area of innovation and research both for start-ups and established financial services firms. The potential of Regtech – tools and services to automate compliance tasks – has been made evident as the financial services industry has faced new and unforeseen challenges as a result of the COVID-19 crisis. The FCA's Data Strategy has also reinforced the regulator's position as a potential creator and user of Regtech solutions.

Distributed ledger technologies (DLT) continue to emerge in diverse sectors across the UK, although there are currently few applications developed beyond a proof-of-concept stage. There are, however, a number of large-scale international blockchain projects involving global financial institutions which have a UK nexus; for example, the Diem payment system. While cryptocurrencies are not widely accepted as a means of payment in the UK, investment and trading in cryptocurrencies are gaining some traction.

The UK is widely acknowledged as a world leader in the creation of new forms of crowdfunding and the market continues to grow. Last year, the two largest equity crowdfunding platforms in the UK, Crowdcube and Seedrs, announced plans to merge, which will create one of the world's largest private equity marketplaces (subject to clearance from the UK's competition authority, among others).

Quantum computing technology continues to be promoted across the UK economy. In September 2020, it was announced that the UK's first quantum computer that would be commercially available to businesses would be located in Oxfordshire. Please refer to our expert analysis chapter for more on this topic.

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.

The FCA has, however, prohibited the marketing, distribution or sale – in or from the UK – to all retail clients of derivatives and exchange traded notes (ETNs) that reference certain types of unregulated, transferable cryptoassets. These rules, contained in Policy Statement (PS20/10) and published in October 2020, came into force on 6 January 2021 (see further question 3.2 below).

Additionally, 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.

In October 2020, the UK government concluded a consultation on whether certain cryptoassets should be brought within the scope of the financial promotions regime in order to enhance consumer protection.

See further question 3.2 for 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 IPO has been a popular avenue for certain fintech businesses in recent years (see further our answers to questions 2.3 and 2.4 below). However, even for those fintech businesses which are not yet in a position to raise finance through these 'traditional' routes, there are a number of funding sources available in the UK once the resources of 'friends, family and fools' have been exhausted.

In response to COVID-19, the UK government announced the launch of the Future Fund scheme (which closed to new applicants on 31 January 2021) to stimulate investment during the pandemic by providing government-backed convertible loans of between £125,000 and £5 million to match investments made by private investors. As noted in question 1.1, proposals from the government-commissioned Kalifa Review were published in February 2021; these include changes to the UK's Listing Rules to allow companies with a premium listing to have dual class share structures and reducing the minimum free-float requirement to 10% for a limited time post-IPO. In the 2021 Budget, the UK government announced: (a) the launch of a new £375 million scheme to encourage private investors to co-invest with the government in highly innovative research and development companies; and (b) a fast-track visa for highly skilled migrants with a job offer from a recognised high-growth firm designed to make it easier for fintech companies to recruit.

Investment into the UK fintech's sector dipped slightly during 2020 in light of COVID-19, but statistics show that approximately £3 billion was invested in UK fintechs and the UK retained its role as the top-ranking investment destination in Europe. This included Revolut's raise of $580 million, Molo's £266 million and Monzo's £125 million, as well as other sizeable investment rounds by Checkout.com, Starling Bank and Onfido.

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. Investments in loan notes will not qualify for certain tax reliefs, including SEIS and EIS as described in question 2.2 below. An alternative to the CLN, structured so as to qualify for such reliefs, is the advanced subscription agreement, whereby the investor subscribes for future equity determined by reference to the relevant trigger event.

As a company matures, it will typically undergo a series of equity fundraisings (seed funding, Series A, Series B and so on). In 2020, the mobile bank Monzo undertook a £60 million Series G fundraising.

Crowdfunding, where members of the public pool resources through an intermediating platform (typically in exchange for shares), 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 (which have announced plans to merge, see question 1.1. above). In 2019, Curve, the crowd management start-up, launched its first ever crowdfunding campaign and broke the record for the fastest campaign to raise £4 million on Crowdcube, raising the amount in 42 minutes. 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.

Debt

Whilst small businesses are unlikely to have recourse to 'traditional' bank loans, there are more tech-focused banks, such as Silicon Valley Bank and OakNorth Bank, which specifically provide debt finance to tech 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 the following tax incentives for investment in start-ups:

- The Seed Enterprise Investment Scheme (SEIS) offers a 50% income tax relief for UK taxpayers investing up to £100,000 in qualifying start-ups. A company can raise no more than £150,000 in total via SEIS investment. To qualify for SEIS, a company must (among other qualifying criteria) be no more than two years old, have assets of less than £200,000 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). A company can raise no more than £5 million *per annum* (and £12 million in the company's lifetime) via EIS or VCT investments, unless the company is a 'knowledge intensive company' in which case the limit is £10 million *per annum* (and £20 million in the company's lifetime).
- SME R&D tax credits of up to 230% for certain companies with fewer than 500 employees.
- The Patent Box Scheme, which allows companies to apply a lower rate of Corporation Tax to profits earned from patented inventions.

These incentives are not specific to the tech or fintech sectors and are generally available to qualifying companies and investors in all sectors.

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. A premium listing on the main market of the London Stock Exchange will, for example, entail more onerous requirements than a listing on the more junior Alternative Investment Market.

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

- The company to be duly incorporated, validly existing and operating in conformity with its constitution and its shares to comply with the laws of the company's place of incorporation, duly authorised and have all necessary statutory and other consents.
- The company's shares to be freely transferable and free from any restrictions on the right of transfer.
- A minimum market capitalisation of £700,000.
- The company to publish an approved prospectus.
- The company to ensure that at least 25% of its shares are in public hands.

The government-commissioned Kalifa Review (referred to in questions 1.1 and 2.1) has proposed changes to the UK's Listing Rules to allow companies with a premium listing to have dual class share structures and reducing the minimum free-float requirement to 10% for a limited time post-IPO.

In contrast, to list on the Alternative Investment Market, there are no requirements in respect of the percentage of shares to be in public hands or market capitalisation and, in certain cases, no requirement for admission documents (such as the prospectus) to be pre-vetted by the market or UK regulators.

To obtain a premium listing on the London Stock Exchange, a company would need to comply with requirements additional to the standard listing requirements above, such as supplying three years of audited financial accounts and demonstrating a sufficient revenue-earning record and working capital.

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

A notable example is that of Funding Circle, a peer-to-peer lending platform, which listed on the London Stock Exchange in September 2018 and was valued at close to £1.5 billion.

While not a fintech company, the UK's largest ever IPO to date was The Hut Group, an e-commerce business, which listed on the London Stock Exchange in September 2020, valued at close to £5.4 billion. The IPO was structured to enable the CEO to retain a level of control over the company through a founder share that gives him a veto on any bid for or change of control of the company in the three years following the IPO and by allowing the CEO to also hold the role of chairman. This tech listing put the spotlight on the entrenchment of founder rights (which will become easier if the proposals from the Kalifa Review are adopted).

Mode Global, a UK-based financial services company, also listed on the London Stock Exchange in October 2020.

There is growing speculation about a number of UK firms that could potentially IPO in the upcoming year.

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. 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. Whether a particular activity constitutes a regulated activity can, therefore, be a complex question and we recommend obtaining specific legal advice.

A firm that wishes to undertake regulated activities in the UK will need to obtain authorisation from one of the UK's financial regulators, the FCA or the Prudential Regulation Authority (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.

Notwithstanding the technology-neutral starting point described above, some clarity is emerging over the UK's regulatory approach to cryptoassets (see further question 3.2). In April 2018, the FCA confirmed that cryptocurrency derivatives are capable of being financial instruments under the Markets in Financial Instruments Directive II (MiFID II) and so dealing in, arranging transactions in, advising or providing other similar services in relation to derivatives that reference either cryptocurrencies or tokens issued through an ICO could require authorisation from the FCA. The capabilities of data-driven technologies are gaining momentum in the UK and elsewhere. The Centre for Data Ethics and Innovation (CDEI) is an advisory body to the government whose work covers the question of whether further regulatory provision needs to be made in respect of AI. The FCA continues to collaborate with the Alan Turing Institute on the use of AI in the financial sector in an effort to explore the transparency and explainability of AI in the financial sector.

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

The FCA has prohibited the marketing, distribution or sale to all retail clients of derivatives and ETNs that reference certain types of unregulated, transferable cryptoassets. It has also confirmed that cryptocurrency derivatives are capable of being financial instruments under MiFID II.

Since 10 January 2020, existing cryptoasset exchange and wallet provider businesses in the UK have needed to be compliant with the MLRs (as amended), including the requirement to be registered with the FCA by 9 January 2021 in order to continue to carry on business.

Separately, we note that in 2019 the UK Jurisdiction Taskforce (UKJT) co-ordinated and published an authoritative legal statement on the status of cryptoassets and smart contracts under English private law, which has since been applied and accepted in the Commercial Court, bringing some legal certainty to this area.

Aside from the notes above, and as a general rule, there is no specific regulatory framework directed at cryptocurrencies or cryptoassets in the UK. Whether and what regulation applies to a particular cryptoasset instrument or activity is decided on a case-by-case basis. A gradual broadening of the UK's legislative framework to encompass a wider range of cryptoassets seems likely.

The dominant framework for categorising cryptoassets for regulatory purposes in the UK was established by the FCA in its 2019 'Guidance on Cryptoassets', which presents three categories of token in relation to how they fit within existing FCA regulation: e-money tokens; security tokens; and unregulated tokens. Unregulated tokens are further subdivided into utility tokens (used to access a service) and exchange tokens (primarily used as a means of exchange, such as Bitcoin). Currently, only e-money tokens, which meet the definition of electronic money in the Electronic Money Regulations 2011 (EMRs), and security tokens, which have characteristics akin to specified investments like a share or debt instrument, fall within the regulatory perimeter.

In a January 2021 consultation paper, the UK government proposed the introduction of a regulatory regime for stable tokens used as a means of payment, covering firms issuing stable tokens and firms providing services in relation to them, either directly or indirectly to consumers. Such participants and entities are likely to include cryptoasset exchanges and wallets. It has proposed to maintain, as far as possible, the taxonomy that divides cryptoassets into e-money, security and unregulated tokens. Unregulated exchange and utility tokens (such as Bitcoin and Ether) and algorithmic stablecoins remain out of scope of the authorisation regime for now.

The UK government is also currently assessing whether to bring the promotion of certain 'qualifying crypto-assets' within the scope of the financial promotions regime.

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?

The financial regulators and policy-makers in the UK continue to be very receptive to fintech. As noted in question 1.1, a review of the UK's fintech sector is currently underway to identify what can be done, by both government and industry, to support growth and competitiveness and 'ensure the UK maintains its global leadership in this vital sector'.

This favourable political environment naturally 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. It began its own innovation project in 2014, which consists of a Regulatory Sandbox, an Innovation Hub and a Global Financial Innovation Network (GFIN) (in addition to FCA's Digital Sandbox launched in May 2020 in response to the COVID-19 pandemic). The Regulatory Sandbox allows businesses to test innovative products, services, business models and delivery mechanisms with real consumers in a controlled environment. The Kalifa Review (referred to in question 1.1) recommended an enhancement to the existing Sandbox in the form a Scalebox, to support firms in the growth phase.

The Innovation Hub provides a means by which new and established businesses – both regulated and non-regulated – can introduce innovative financial products and services to the market, with support from the FCA on the application of the regulatory framework. The GFIN was launched in January 2019 in collaboration with 38 other financial regulators and creates a new framework for co-operation, promoting information and knowledge sharing amongst regulators, and also provides firms with an environment in which to trial cross-border solutions.

The Bank of England also 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 has also been actively 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. Five new projects have joined in 2020, aiming to help organisations comply with the ICO's Data Sharing Code or the ICO's Age Appropriate Design Code. In the previous year, participants included a start-up monitoring the flow of funds in the financial system for the purposes of crime and fraud prevention.

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 which 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) and 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 of 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).

Since the expiry of the Brexit implementation period on 31 December 2020, it is no longer possible to rely on the passport provided for in European legislation that enabled a firm to use an authorisation in another EU country to perform regulated activities in the UK. Certain types of EU firms that were eligible to notify the regulator of their intention to use a temporary permissions regime (TPR) established under UK legislation may, however, continue operating in the UK while they seek authorisation.

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 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 they may diverge over time. Fintech organisations may therefore need to assess which (or both) of the regimes apply to any given processing of 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 UK GDPR is supplemented by the Data Protection Act 2018 (DPA 2018), which 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 an EU Directive. A new Regulation, to replace this Directive, is currently being negotiated at EU level, but it is unclear when it may be finalised and whether the UK will choose to enact similar or equivalent provisions.

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:

- Large fines – the UK regulator, the ICO, can impose fines of up to 4% of annual worldwide turnover or €20 million (whichever is greater) on controllers and/or processors.
- 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 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 which 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 above);
- the Computer Misuse Act 1990 creates a number of cybercrime offences relating to actions such as unauthorised access or interference with a computer and DDoS attacks. It was amended in 2015 to implement the EU's Cybercrime Directive; and
- sector-specific rules may apply. For example: (i) fintech businesses which are telecoms operators or 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).

Cyber is a regulatory priority for the FCA, who has a specialist cyber team to lead its cyber work within its wider operational resilience remit. It also has responsibility under FSMA to take regulatory action to counter financial crime, and under Principle 11 of the FCA Handbook material cyber incidents must be reported to the FCA. The FCA has provided cyber-related guidance and materials, has developed the CBEST framework for testing firms' cyber resilience and has produced a self-assessment questionnaire to help firms understand their cyber resilience capability at a high level.

The UK's National Cyber Security Centre also provides cyber support for organisations, produces guidance (including on new risk areas such as COVID-19, as cyber criminals sought to exploit the pandemic) and offers various certification schemes.

Note: The UK's 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 markers, 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 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.

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

The UK's key piece of AML legislation is the Proceeds of Crime Act 2002 (POCA). There are essentially three principal money-laundering offences: (i) concealing, disguising, converting or transferring the proceeds of crime; (ii) becoming concerned in an arrangement to facilitate the acquisition, retention or control of, or to otherwise make available, the proceeds of crime; and (iii) acquiring, possessing or using property while knowing or suspecting it to be the proceeds of crime. There are also 'secondary' offences of: (i) failure to disclose any of the above offences; and (ii) tipping-off of persons engaged in money laundering as to any investigation.

Firms operating in the regulated sector, including fintech firms, must comply with the MLRs as amended by the 2019 Regulations, 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.

Finally, there are two corporate offences for failing to prevent the facilitation of domestic or overseas tax evasion, which can be committed by any body corporate or partnership under the Criminal Finances Act 2017.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

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 which is aimed specifically at the fintech sector. Any additional relevant regulatory regimes would likely be specific to the sector in which a particular fintech firm operates.

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), or 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. The same applies to dismissals in response to the employee raising health and safety concerns, which is significant in the context of the COVID-19 pandemic.

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 which 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 (or from the first day where the absence is related to COVID-19), 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?

Immigration rules apply to all companies and are not specific to the fintech sector (although the Kalifa Review of UK Fintech published proposals in February 2021 which include creating a new visa stream to enhance access to global talent for fintech scaleups).

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 (applications must be submitted by 30 June 2021).

A new points-based immigration system was introduced in the UK on 1 December 2020, and from 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 all workers must satisfy minimum English language skills and maintenance requirements. The system incorporates a skilled worker route and a 'global talent' route; the latter is for exceptionally talented or promising individuals in certain fields (including digital technology) who wish to come to the UK to work. The system also 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 obtain a sponsor licence for the appropriate tier(s), allowing them to issue certificates of sponsorship to migrants. Sponsors must comply with various requirements, including conducting right-to-work checks, complying with record-keeping duties and reporting certain employee events to 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.

Fintech products and services can be protected in the UK by several different IP rights.

Copyright: Copyright protects the computer program (both object code and source code) as well as screen displays, graphics, sound effects and other elements which are produced when the program is running. Copyright does not need to be registered in the UK. Copyright is largely unaffected by Brexit as copyright is a result of various international copyright treaties.

Database right: Compilations of data can be protected in the UK by copyright, such as in information management systems, purchase order systems and websites. Previously, UK entities could obtain protection at the EU level, as a *sui generis* right if there has been a substantial investment in the obtaining, verification or presentation of the contents. UK entities are no longer able to hold database rights in the EU for databases created after 1 January 2021. Existing *sui generis* database rights will continue to be protected in the UK and EU Member States.

Patents: Computer programs and business methods generally are not patentable in the UK, unless they possess a technical character. What gives a computer program or a business method the required technical character so that it falls outside the exclusion is often difficult to determine. It also varies according to whether the patent for computer programs or business methods is applied for the UK only through the UK IPO or for the EU (designating the UK) through the European Patent Office (the UK IPO generally being more restrictive in its approach). Patents are largely unaffected by Brexit as the EPO is not an EU Institution (unlike the EUIPO).

Confidentiality: Software source code could be protected as a trade secret or subject to confidentiality considerations. Unless a fintech business can obtain a patent for the computer program, confidentiality or trade secrets are usually the best way of preventing third parties from copying any invention or innovation embodied in the program. Brexit has no immediate impact in confidentiality and trade secret laws – UK trade secret laws were already broadly in line with the EU Trade Secrets Directive.

Trade marks: The branding of fintech companies, 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 IPO. Previously, UK entities could apply for and register EU-wide trade marks (including the UK) at the EU IPO. After Brexit, existing EU trade marks, and international registrations designating the EU, will no longer be valid in the UK. The UK will grant owners of rights registered before 31 December 2020 a new UK equivalent right. Owners of pending EUTM applications and EU designations will have to actively apply in the UK for equivalent national UK trade mark protection by 30 September 2021.

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

Ownership of IP rights depends upon the context in which they are created.

Copyright: Generally, the first owner of copyright is the author of the software, and for computer-generated works, the author is 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, then copyright will generally belong to the employer. Further, where 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: A patent for an invention is owned by the inventor. Again, if the patent 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 were of outstanding benefit to the employer. The UK IPO, EPO and USPTO have recently confirmed that a computer (AI algorithm) cannot be an 'inventor' of a patent. As with copyright, there are many debates at national and international level in relation to what role, if any, should the patent system play in encouraging the development and use of AI technologies.

Trade marks: Generally, the person who applies for and registered the trade mark is the owner of that trade mark.

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, UK national protection is available for many IP rights. Brexit will affect EU-wide rights which no longer cover the UK to the extent that the UK government must now legislate to provide equivalent UK protection.

Copyright: International copyright conventions provide automatic reciprocal protection overseas for UK qualifying works. The WIPO Copyright Treaty particularly deals with protection of copyright for software and databases.

Patent: Patent protection in the UK may be obtained by (1) the national UK route, (2) the EU patent system (EPC), or (3) the international patent system (PCT). The UK government has announced that the UK will no longer participate in the Unitary Patent and the centralised enforcement system of the Unified Patent Court.

Trade marks: Trade mark protection in the UK may be obtained by (1) the national UK route, or (2) the international Madrid System (designating the UK).

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, an 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 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 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 if the licensee wishes to maintain standing to sue for infringement (non-exclusive 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 UKIPO. Trade mark licences must be in writing, signed and registered with the UK IPO.

Security interests: 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. They also must be registered with UK IPO so as to be effective.

Rob Sumroy is Head of Slaughter and May's Technology practice and co-heads the firm's Emerging Tech Team and Global Data Privacy Hub. He advises on all aspects of technology, outsourcing, e/m-commerce, big data, data protection, cyber security and IP, as well as assisting organisations with their digital strategies. Rob is ranked in the IT and Outsourcing sections of *Chambers UK*, recognised as a leading individual for Commercial Contracts in *The Legal 500* and is listed in *SuperLawyers*.

Slaughter and May
1 Bunhill Row
London, EC1Y 8YY
United Kingdom

Tel: +44 20 7090 4032
Email: rob.sumroy@slaughterandmay.com
URL: www.slaughterandmay.com

Ben Kingsley is a partner in Slaughter and May's Financial Regulation group and co-heads the firm's Fintech and Emerging Tech Team. Ben assists a variety of financial institutions in the UK and Europe, from established global financial and TMT groups to high growth start-up challengers, advising on all of the financial regulatory touch-points. Ben is recognised in *Chambers UK* and *The Legal 500* as a leading individual in the area of fintech.

Slaughter and May
1 Bunhill Row
London, EC1Y 8YY
United Kingdom

Tel: +44 20 7090 3169
Email: ben.kingsley@slaughterandmay.com
URL: www.slaughterandmay.com

Natalie Donovan is a senior lawyer in Slaughter and May's Technology and Strategic Sourcing practices and helps co-ordinate the firm's Emerging Tech and Cyber Teams. As a counsel professional support lawyer, she supports the firm in the areas of technology, outsourcing, digital and data regulation and cyber security. Before working at Slaughter and May, Natalie worked in-house at a large global IT supplier.

Slaughter and May
1 Bunhill Row
London, EC1Y 8YY
United Kingdom

Tel: +44 20 7090 4058
Email: natalie.donovan@slaughterandmay.com
URL: www.slaughterandmay.com

Selmin Hakki is a senior professional support lawyer in the Financial Regulation group at Slaughter and May. She supports the firm in advising on all aspects of UK financial regulation, including in relation to fintech developments. Selmin helps to co-ordinate the firm's Emerging Tech stream and is involved its tech entrepreneurs programme.

Slaughter and May
1 Bunhill Row
London, EC1Y 8YY
United Kingdom

Tel: +44 20 7090 5153
Email: selmin.hakki@slaughterandmay.com
URL: www.slaughterandmay.com

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