

Fintech

Contributing editors

Angus McLean and Penny Miller



2017

GETTING THE
DEAL THROUGH

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DEAL THROUGH 

Fintech 2017

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Published by
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First published 2016
First edition
ISSN 2398-5852

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Preface

Fintech 2017

First edition

Getting the Deal Through is delighted to publish the first edition of *Fintech*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons, for their assistance in devising and editing this volume.

GETTING THE 
DEAL THROUGH 

London
September 2016

Introduction

Angus McLean and Penny Miller

Simmons & Simmons

Since its emergence into the mainstream over the last few years, the financial technology (fintech) sector has captured the interest and imagination of entrepreneurs, investors, governments and regulators, not to mention incumbent financial service institutions. While those incumbent businesses have been working hard to evaluate the risks (and the potential benefits) created by the fintech revolution, lawyers and regulators around the globe have increasingly been grappling with the legal and regulatory issues thrown up by these new disruptive technologies and business models.

What is fintech?

The term 'fintech' is now used to describe a very broad range of business types. Peer-to-peer (or marketplace) lending, equity crowdfunding, remittance, payments, digital currency, personal finance and wealth management (including 'robo-advice') businesses are all commonly captured under the banner. However, the term is also used to refer to start-up and online banks and software businesses that provide technology solutions to the financial services industry. This includes a growing number of 'regtech' businesses, which offer software to assist financial services businesses comply with their growing regulatory obligations, and 'insurtech' businesses, which provide insurance products and technology solutions. The term is also increasing synonymous with the plethora of businesses and consortia that are investigating ways in which blockchain technology (the software system that underpins Bitcoin) can be applied to other aspects of the financial services industry.

Regulatory impact

Each of these 'verticals' has its own unique set of legal issues, but there are important commonalities too. In particular, the impact of financial services regulation on the fintech industry. Despite many adopting the stereotypical trappings of Silicon Valley 'tech' start-ups (eg, jeans, trainers and the odd ping-pong table), fintech businesses are complex and very often operate in (or very close to) regulated areas. The burden of regulatory compliance is difficult for any business to manage, even banks with armies of legal, risk and compliance experts. An added complication for fintech businesses is that their new business models may well not fit squarely within the existing regulatory framework that

is typically designed with traditional financial services businesses in mind. Increasingly new rules are also being introduced to regulate different areas of the fintech industry. It is little wonder, therefore, that many fintech businesses at all stages of their lifecycles cite regulatory compliance as their number one headache.

It is this issue that has, in part, led a number of regulators around the world, including in the UK, Australia, Singapore, Abu Dhabi and Hong Kong, to announce or investigate the establishment of 'regulatory sandboxes'. These initiatives are intended to allow new fintech business models and technologies to be tested under the supervision of the regulator before they have received full authorisation. The relevant regulator can then evaluate the risks presented by the new business models and technologies and work out whether they should be regulated under any existing regimes or if new regulations are required.

At least two regulators, the UK's Financial Conduct Authority and the Australian Securities and Investments Commission (in the form of their Innovation Hubs) have also established special support services that provide informal feedback to innovative fintech businesses on the regulatory implications of their business models.

Pivots

Lawyers advising (and investors investing in) early-stage fintech businesses should also keep in mind that those businesses often change direction and business models (referred to in tech parlance as a 'pivot') several times during their first few years of operation. Therefore, legal documentation and regulatory permissions put in place at the outset of a business' lifecycle may soon become out of step with what the business is actually doing in practice.

This publication is intended to provide a user-friendly resource to help fintech entrepreneurs and their advisers and investors around the world navigate the often complex key legal and regulatory issues on which we are most often asked to advise.

As this is the first edition of the publication, we would very much value feedback on other areas that we should cover in the future. In the meantime, we hope the first edition serves as a valuable reference point wherever you are on your fintech journey.

Taiwan

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Lee and Li, Attorneys-at-Law

Financial services regulation

1 Which activities trigger a licensing requirement in your jurisdiction?

In Taiwan, conducting finance-related activities generally requires a licence from the Financial Supervisory Commission (FSC). Such activities include, without limitation:

- Securities-related activities: securities underwriting, securities brokerage, securities dealing (ie, proprietary trading), securities investment trust (ie, asset management), and securities investment consulting. But general consulting business, such as acting as financial advisers to arrange investments or bring about merger or acquisition deals, does not require any licence.
- Bank-related activities:
 - lending: lending activities do not fall within the businesses to be exclusively conducted by a local licensed bank. However, as no financing company may be registered in Taiwan, it is currently not possible for an entity to register as a financing company to carry on lending activities in Taiwan;
 - factoring and invoice, discounting and secondary market loan trading: for more details, see question 3;
 - deposit taking;
 - foreign exchange trading;
 - remittance; and
 - electronic payment: see question 11.

2 Is consumer lending regulated in your jurisdiction? Describe the general regulatory regime.

A local licensed bank may carry on consumer lending activities. Although lending activities do not fall within the businesses to be exclusively conducted by a local licensed bank, carrying out lending activities as a business is still not permitted in Taiwan.

3 Are there restrictions on trading loans in the secondary market in your jurisdiction?

The general principle under Taiwan's Civil Code is that any receivable is assignable unless (i) the nature of the receivable does not permit such transfer; (ii) the parties to the loan have agreed that the receivable shall not be transferred; or (iii) the receivable, by nature, is not legally attachable. The receivable under loans, subject to (ii) above, are generally transferable. A bank is subject to stricter rules that generally loans that remain performing cannot be transferred by a bank except for limited exceptions (such as for the purpose of securitisation). For this reason, Taiwan does not currently have an active secondary loan market.

4 Describe the general regulatory regime for collective investment schemes and whether fintech companies would generally fall within the scope of any such regime.

Local funds (securities investment trust funds)

The most common form of collective investment scheme in Taiwan is securities investment trust funds, which may be offered to the general public or privately placed to specified persons. Public offering of a securities investment trust fund needs prior approval or effective registration with the FSC or the institution designated by the FSC. No prior approval is required for a private placement of a securities investment

trust fund; however, it can only be placed to eligible investors, and within five days after the payment of the subscription price for initial investment offering, a report on the private placement shall be filed with the FSC or the institution designated by the FSC. Generally, the total number of qualified non-institutional investors under a private placement shall not exceed 35.

Under current laws and regulations, public offering and private placement of securities investment trust funds may only be conducted by FSC-licensed securities investment trust enterprises (SITEs). Currently, the paid-in capital of a SITE should not be lower than NT\$300 million, and there exist certain qualifications for the shareholders of a SITE. A fintech company, which is not a SITE, will not be able to raise funds as a SITE does.

Offshore funds

Offshore funds having the nature of a securities investment trust fund may also be publicly offered (subject to FSC prior approval) or privately placed (subject to post-filing with FSC or its designated institution) to Taiwan investors, subject to certain qualifications and conditions. An offshore fintech company, which does not have the nature of a securities investment trust fund, will not be able to be offered in Taiwan.

5 Are managers of alternative investment funds regulated?

Currently, only securities investment funds, real property trust funds and futures trust funds (which focus on investment in futures and derivatives) are permitted in Taiwan. There are no laws or regulations regulating or governing investment funds on other assets. These funds may only be offered and managed by FSC-licensed entities such as SITEs, banks or futures trust enterprises. A fintech company, which is not a SITE, a bank or a future trust enterprise, will not be able to manage such funds in Taiwan.

6 May regulated activities be passported into your jurisdiction?

There is no concept of the 'passporting right' in Taiwan. To engage in regulated financial activities, a company needs to apply for the relevant licences to the FSC. Depending on the types of regulated activities, the applicant shall meet certain qualifications as required under relevant laws and FSC regulations.

7 May fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

No. Foreign companies cannot carry on regulated businesses (which include financial services) without a licence and the FSC licences required for providing financial services are not issued to foreign companies without establishing a subsidiary or a branch in Taiwan.

8 Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

To date there are no laws or regulations specifically regulating or governing peer-to-peer lending. See 'Update and trends' for the prospective regulatory developments on this subject.

9 Describe any specific regulation of crowdfunding in your jurisdiction.

Equity-based crowdfunding

The following two ways of fundraising are generally known as the equity-based crowdfunding platforms in Taiwan. Such ways of crowdfunding are exempted from the prior approval or effective registration normally required under the Securities and Exchange Act.

The 'Go Incubation Board for Startup and Acceleration Firms' (GISA) of the Taipei Exchange

The Taipei Exchange (TPEX), one of the two securities exchanges in Taiwan, established the GISA in 2014 for the purpose of assisting the innovative and creative small-sized non-public companies in capital raising.

A company with paid-in capital of less than NT\$50 million and having innovative or creative ideas with potential for developments is qualified to apply for GISA registration with TPEX. After TPEX approves the application, the company will first start receiving counselling services from TPEX regarding accounting, internal control, marketing and legal affairs. After the counselling period, there would be another TPEX review to examine, among other things, the company's management teams, role of board of directors, accounting and internal control systems, and the reasonableness and feasibility of the plan for capital raising, and if the TPEX deems appropriate, the company may raise capital on the GISA. The amount raised by the company through the GISA may not exceed NT\$30 million unless otherwise approved. In addition, an investor's annual maximum amount of investment through the GISA should not exceed NT\$150,000, except for angel investors defined by TPEX or wealthy individuals with assets exceeding an amount set by TPEX and having professional knowledge regarding financial products or trading experience.

Equity-based crowdfunding on the platforms of securities firms

A securities firm may also establish a crowdfunding platform and conduct equity crowdfunding business. Currently, a company with paid-in capital of less than NT\$30 million may enter into a contract with a qualified securities firm to raise funds through the crowdfunding platform maintained by such securities firm, provided that the total amount of funds raised by such company through all securities firms' crowdfunding platforms in a year may not exceed NT\$30 million. The amount of investment made by an investor on a securities firm's platform may not exceed NT\$50,000 for each subscription, and may not exceed NT\$100,000 in aggregate in a year, except for angel investors as defined in the relevant regulations.

Non-equity-based crowdfunding

In 2013, TPEX established the 'Gofunding Zone' in its official website. This mechanism allows the non-equity-based crowdfunding platform operators, once approved by TPEX, to post the information regarding their proposals and projects on the Gofunding Zone. There are certain qualifications for the platform operator making such application, including (without limitation): the platform operator should have established mechanisms for reviewing and examining the business startup innovation proposals; the platform operator should have established control mechanisms for the operational procedures of funds payments and receipts for successfully funded business startup innovation proposals and for refunds for unsuccessful proposals; and the platform operator should have established control mechanisms for the information security of its crowdfunding website.

The Gofunding Zone provides information disclosure functions only, so that any persons who wish to sponsor a business startup innovation proposals presented on the Gofunding Zone should contact the respective platform operators directly.

10 Describe any specific regulation of invoice trading in your jurisdiction.

See question 3 for the relevant rules on transfer or assignment of receivables. In general, no company may carry out the activities of receivable transfer for business. Purchase of accounts receivable may only be conducted by a licensed bank.

11 Are payment services a regulated activity in your jurisdiction?

Yes. Traditionally payments by wire transfer can only be made through a licensed bank. The payments via cheques and credit cards are also run through banks.

In 2015, the Act Governing Electronic Payment Institutions (E-Payment Act) was enacted. This E-Payment Act regulates the activities of an electronic payment institution, acting in the capacity of an intermediary between payers and recipients to engage, principally, in (i) collecting and making payments for real transactions as an agent; (ii) accepting deposits of funds as stored value funds; and (iii) transferring funds between e-payment accounts. According to the E-Payment Act, an electronic payment institution should obtain approval from the FSC unless it engages only in (i) above and the total balance of funds collected and paid and kept by it as an agent does not exceed the specific amount set by the FSC.

12 Are there any restrictions on cold-calling investors or clients in your jurisdiction?

Whether cold-calling is permitted would depend on the types of the services or products. In general, cold-calling is permitted if the products or services may be offered to the general public. When there exists any restriction on the number of offerees on a particular service or product, the cold-calling may be challenged if the potential persons who received the call are more than the maximum number of investors under relevant regulations. In addition, cold-calling would not be permitted for certain services or products. For example, securities firms should not recommend trading of stocks listed on the Taiwan Stock Exchange or TPEX to unspecified persons (ie, the general public).

Certain provisions in the Fair Trade Commission (the competent authority in charge of antitrust and unfair competition) and the Personal Data Protection Act (PDPA) also provide that whenever a call receiver refuses the telemarketing call, the cold-caller should stop the call.

13 Does the regulator in your jurisdiction make any specific provision for fintech services and companies?

To promote the financial technology innovation service, the FSC established the Financial Technology Office (the Fintech Office) in 2015 and, on 12 May 2016, publicly announced the 'White Paper on FinTech' (the White Paper). The main tasks of the Fintech Office are promoting fintech innovation, supporting research including big data and analytics fintech policy reform and coordination across government and regulators. The White Paper outlines the principal fintech trends, including those related to financial services, innovation research, personnel training, risk management and infrastructure, and indicates the open-minded attitude of the FSC towards the development of fintech.

14 Are there any local marketing rules applicable with respect to marketing materials for financial services in your jurisdiction?

The Financial Consumer Protection Act (FCPA) and its related regulations provide for the general marketing rules applicable to the marketing materials for financial services. In general under the FCPA, when carrying out advertising, promotional or marketing activities, financial services providers should not falsify, conceal, hide or take any action that would mislead financial consumers, and should ensure the truthfulness of the advertisements.

In addition to the general marketing rules under the FCPA, the financial service providers may also be subject to additional marketing rules as specified in the laws and regulations governing the specific types of financial services or products.

15 Are there any regulator-imposed temporary restrictions on financial products in place that are relevant to fintech companies in your jurisdiction?

No. Currently there are no regulator-imposed temporary restrictions on financial products that are relevant to fintech companies in Taiwan. However, the FSC has the power to, from time to time, issue or release any regulations, rulings and guidance to regulate the FSC-supervised entities and regulated activities or to provide its opinion on interpretation of current financial laws and regulations that may be relevant to fintech companies.

16 Are there any foreign exchange or currency control restrictions in your jurisdiction?**Taiwanese company or Taiwan branch of a foreign company**

Such company may, upon filing a report with the central bank, purchase foreign exchange with New Taiwan dollars and remit the same out of Taiwan for purposes other than trade or service-related payments, in an amount up to US\$50 million per calendar year, without special approval from the central bank. Foreign exchange purchase for purposes other than trade or service-related payments exceeding the applicable ceiling would require special approval from the central bank; such approval is discretionary and would be decided by the central bank on a case-by-case basis.

Foreign company not having a branch in Taiwan

Such foreign company may, upon filing a report with the central bank, only purchase foreign exchange with New Taiwan dollars and remit the same out of Taiwan in an amount of up to US\$100,000 for any single transaction.

17 If a potential investor or client makes an unsolicited approach either from inside the provider's jurisdiction or from another jurisdiction, is the provider carrying out a regulated activity requiring a licence in your jurisdiction?

Under current financial laws and regulations, no person is allowed to provide any financial services in Taiwan without obtaining prior approval or licence from the FSC. However, if the services or products are provided outside Taiwan without involvement of any Taiwanese employees or agents, such activity may not require any licence in Taiwan.

18 Are there licensing requirements that would be triggered where the investor or client is a temporary resident in your jurisdiction?

Whether any licence would be required (as described in question 1) generally depends on what activities the service provider conducts in Taiwan. In theory, it is irrelevant if the investor or client is only a temporary resident.

19 If the investor or client is outside the provider's jurisdiction and the activities take place outside the jurisdiction, is the provider carrying out an activity that requires licensing in its jurisdiction?

If the jurisdiction is Taiwan, Taiwan laws and regulations would not be applicable to the situation as described.

20 Are there continuing obligations that fintech companies must comply with when carrying out cross-border activities?

Currently there are limited laws and regulations applicable to fintech companies. If any such laws and regulations are applied, the obligations a fintech company must comply with will not change regardless of whether the activities are carried out in Taiwan.

21 Does a third-party referral qualify as an unsolicited approach in your jurisdiction?

Although the laws and regulations are silent on this issue, a reasonable interpretation would be that a third-party referral should be considered as an unsolicited approach as long as the service provider does not ask the third party to refer such new client and does not attempt to approach the new client before the referral.

22 What licensing exemptions apply where the services are provided through an offshore account in your jurisdiction?

As described in question 1, licensing requirements generally depend on the types of products and services to be offered in Taiwan. The relevant licensing requirements would not be exempted simply because the relevant financial services or products are provided through an offshore account held by the client.

23 What licensing exemptions apply where the services are provided through a nominee account in your jurisdiction?

See question 22. The same applies to a nominee account.

24 What licensing exemptions apply where the services are only ancillary or incidental to other core activities or services in your jurisdiction?

See question 22. The same applies to services that are only ancillary or incidental to the core activities or services triggering the licensing requirement.

However, a financial service provider is generally not permitted to provide any financial services not approved by the FSC or non-financial services, unless otherwise permitted by the FSC.

25 What licensing exemptions apply when dealing with clients that are duly licensed in in your jurisdiction?

For certain products or services, the regulations applicable to them may vary depending on the sophistication of the offerees. In general, however, there are no rules for licensing exemptions related to the category of client.

26 What licensing exemptions apply to specific types of client in your jurisdiction?

See question 25.

Securitisation**27 What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?**

There are no particular formality requirements for executing loan agreements. As to security agreements, under Taiwan law, different types of asset are subject to different formality requirements for perfection of a security interest created over them. The formality requirements for the most commonly seen security interests are as follows:

- Chattels: there must be a written agreement to create a chattel mortgage. The mortgagor need not deliver the possession thereof to the mortgagee; however, a registration with the competent authority will be necessary for the mortgagee to claim the chattel mortgage against a bona fide third party.
- Real properties: security interest over real properties is taken by way of a mortgage registered with the relevant land registration offices. The parties must enter into a written agreement to agree on the creation of the mortgage and apply for registration of the mortgage before the mortgage can take effect.
- Shares: to create a pledge over shares, the pledgor and pledgee should enter into a written agreement. If the shares are represented by physical certificates, the pledged share certificates should also be duly endorsed by the pledgor and physically delivered into the pledgee's possession, and a notice of pledge to the issuing company is also required. If the shares are listed and deposited to or registered with the local securities depository (ie, the Taiwan Depository and Clearing Corporation; TDCC), the above endorsement, physical delivery of the shares and notification to the issuing company are not required; instead, a pledge registration of the shares in the TDCC's book-entry system in accordance with the TDCC's regulations will suffice.

No different rules apply to the cases of peer-to-peer lending.

28 What steps are required to perfect an assignment of loans originated on a peer-to-peer lending platform? What are the implications for the purchaser if the assignment is not perfected?

An assignment will not be effective against the borrower until the borrower has been notified of such assignment. If the borrower is not notified of such assignment, the borrower may still make the repayment to the assignor and discharge its repayment obligation by doing so.

29 Is it possible to transfer loans originated on a peer-to-peer lending platform to the purchaser without informing the borrower? Does the assignor require consent of the borrower or are the loans assignable in the absence of a prohibition?

No consent is required from the borrower; see question 28.

30 Would a special purpose company for purchasing and securitising peer-to-peer loans be subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Personal information is protected by the PDPA and the collection and use of any personal data is subject to notice and consent requirements. If a special purpose company, when purchasing and securitising loans, acquires any personal data, it will be subject to the obligations under the PDPA. See question 41 for regulations regarding collection and use of personal data.

Intellectual property rights

31 Which intellectual property rights are available to protect software and how do you obtain those rights?

Software can be protected by intellectual property rights such as patent, copyright or trade secret.

As to patent, an inventor may file an application with Taiwan's Intellectual Property Office, and the patent right will be obtained once the application is approved. For copyrights and trade secrets, there are no registration or filing requirements for a copyright or a trade secret to be protected by law. However, there are certain features that qualify a copyright or trade secret, such as 'originality' and 'expression' for copyright, and 'economic valuable' and 'adoption of reasonable protection measures' for trade secrets.

32 Is patent protection available for software-implemented inventions or business methods?

According to the Patent Act of Taiwan, the subject of a patent right is 'invention' and an invention means the creation of technical ideas, utilising the laws of nature. As a general rule, business methods are regarded as using social or business rules rather than laws of nature, and therefore may not be the subject of a patent right. As for software-implemented inventions, if it coordinates the software and hardware to process the information, and there is technical effect of its operation, it might become patentable. For instance, a 'method of conducting foreign exchange transaction' would be deemed as a business method and thus unpatentable; however, a 'method of using financial information system to process foreign exchange transactions' may be patentable.

33 Who owns new intellectual property developed by an employee during the course of employment?

With regard to a patent, the right of an invention made by an employee during the course of performing his or her duties under employment shall be vested in his or her employer and the employer shall pay the employee reasonable remuneration unless otherwise agreed by the parties.

A trade secret is the result of research or development by an employee during the course of performing his or her duties under employment and it shall belong to the employer unless otherwise agreed by the parties.

For copyright, where a work is completed by an employee within the scope of employment, such employee is the author of the work but the economic rights to such work shall be enjoyed by the employer unless otherwise agreed by the parties.

34 Do the same rules apply to new intellectual property developed by contractors or consultants? If not, who owns such intellectual property rights?

In respect of patent rights and trade secrets, the agreement between the parties shall prevail, or such rights shall be vested in the inventor or developer in the absence of such agreement. However, if there is a fund provider, the funder may use such invention.

In respect of copyright, the contractor or the consultant who actually makes the work is the author of the work unless otherwise agreed by the parties; the enjoyment of the economic rights arising from the work shall be agreed by the parties, or such rights shall be enjoyed by the contractor or the consultant in the absence of such agreement. However, the commissioning party may use the work.

35 How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Trade secrets are protected if they satisfy the following constituent elements: information that may be used in the course of production, sales or operations; having the nature of secrecy; with economic value; and adoption of reasonable protection measures.

To keep the trade secrets confidential during court proceedings, the court trial may be held in private if the court deems it appropriate or it is otherwise agreed upon by the parties. The parties and a third party may also apply to the court for issuing a 'confidentiality preservation order', and the person subject to such confidentiality preservation order should not use the trade secrets for purposes other than those related to the court trial or disclose the trade secrets to those who are not subject to the order.

36 What intellectual property rights are available to protect branding and how do you obtain those rights?

The Trademark Act in Taiwan provides for the protection of brands. The rights of trademarks can be obtained through registration with Taiwan's Intellectual Property Office. The term of protection is 10 years from the date of publication of the registration and may be renewed for another 10 years by filing a renewal application.

37 How can new businesses ensure they do not infringe existing brands?

Every registered trademark will be published on the official website maintained by the Intellectual Property Office and the trademark search system is accessible by the general public. On the search system, a new business may check whether an identical or similar trademark exists and who the proprietor of a registered trademark is.

38 What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Patent

With regard to infringement of an invention patent, the patentee may claim for damages suffered from such infringement. The amount of damages may be calculated by the damage suffered and the loss of profits as a result of the infringement; profit earned by the infringer as a result of patent infringement; or the amount calculated on the basis of reasonable royalties. If the infringement is found to be caused by the infringer's wilful act of misconduct, the court may triple the damages to be awarded. Patent infringements have been decriminalised since 2003.

Copyright

The damage suffered from copyright infringement may be claimed in the process of civil procedure. As for criminal liabilities, there are different levels depending on different types of infringement, ranging from imprisonment of no more than three years and detention, to a fine of up to NT\$750,000.

Trademark

The damages suffered from trademark infringement may be claimed in the process of civil procedure. As for criminal liabilities, any person shall be liable to imprisonment for a period not exceeding three years or a fine not exceeding NT\$200,000, or both, if he or she: uses a trademark that is identical to the registered trademark in relation to identical goods or services; uses a trademark that is identical to the registered trademark in relation to similar goods or services and hence there exists a likelihood of confusion on relevant consumers; or uses a trademark that is similar to the registered trademark in relation to identical or similar goods or services and there exists a likelihood of confusion for relevant consumers.

Trade secrets

The damage suffered from infringement of trade secrets may be claimed in the process of civil procedure. As for criminal liabilities, a person may be sentenced to a maximum of five years imprisonment and, in addition thereto, a fine between NT\$1 million and NT\$10 million if he or she (i) acquires a trade secret by an act of theft, embezzlement, fraud, threat, unauthorised reproduction or other wrongful means, or uses or discloses a trade secret that has been acquired; (ii) carries out an

Update and trends

Peer-to-peer lending is a well-developed or known practice in certain jurisdictions, but it is still rather new to the Taiwanese market. While lending activities do not fall within those exclusively required to be conducted by a local licensed bank, as no financing company may be registered in Taiwan, it is currently not possible for an entity to register as a finance company to carry on lending activities in Taiwan. Although the operators of the peer-to-peer lending platforms might argue that such platforms are simply intermediaries to match the needs of the individual lenders and borrowers (and the platform is neither the lender nor borrower) depending on the business models of the relevant platforms, the FSC might still have basis to challenge from the perspective of banking law and any other relevant laws and regulations.

In April 2016, the FSC issued a press release pointing out the regulatory issues that may arise from peer-to-peer lending activities. Specifically, if an interest is agreed between the platform and the lender, and the repayment of the principal is guaranteed by the platform, it is likely that such activities would be considered 'deposit taking', which is an activity exclusively allowed to be conducted by a local licensed bank. The relevant news published in local newspapers in May 2016 showed that the FSC was contemplating whether to enact a specific law to regulate peer-to-peer lending activities. However, at the time of writing, the news published on 29 June 2016 revealed that the FSC is not likely to make a new law in this regard but would issue certain rulings allowing cooperation between the banks and the platform operators with respect to peer-to-peer lending activities.

unauthorised reproduction of, or uses or discloses, a trade secret that he or she has knowledge or possession of; (iii) fails to delete or destroy a trade secret in his or her possession as the trade secret holder orders, or disguises it; or (iv) knowingly acquires, uses or discloses a trade secret known or possessed by others that is under the circumstances specified in points (i) to (iii) above.

39 Are there any legal or regulatory rules or guidelines surrounding the use of open-source software in the financial services industry?

There exists no specific law or regulation regarding the use of open-source software in Taiwan in the financial services industry. The relevant intellectual property law regulations are applicable.

40 Are there any high-profile examples in your jurisdiction of fintech companies enforcing their intellectual property rights or defending their intellectual property rights against a third party?

To our knowledge, there exists no such example.

Data protection

41 What are the general legal or regulatory requirements relating to the use or processing of personal data?

Under the PDPA, unless otherwise specified under law, a company is generally required to give notice to (notice requirement) and obtain consent from (consent requirement) an individual before collecting, processing or using any of said individual's personal information under the PDPA, subject to certain exemptions. To satisfy the notice requirement, certain matters must be communicated to the individual, such as the purposes for which his or her data is collected, the type of the personal data and the term, area and persons authorised to use the data.

42 Are there legal requirements or regulatory guidance relating to personal data specifically aimed at fintech companies?

There are no such requirements or regulatory guidance.

43 What legal requirements or regulatory guidance exists in respect of anonymisation and aggregation of personal data for commercial gain?

No such requirements or regulatory guidance exists in this respect.

Cloud computing and the internet of things

44 How common is the use of cloud computing among financial services companies in your jurisdiction?

According to the White Paper, among all the industries, the financial industry has invested the most in IT and 21.1 per cent of the application systems of financial industries use cloud computing. The majority of banks and insurance companies have established information centres to provide a continual information service between their personnel and the clients, which means that a 'private cloud' has been developed. As for the public cloud, a type of cloud service rendered by the Financial Information Service Co, Ltd provides the link among the central bank and many banks, post offices, credit unions and ATMs throughout the nation. The application of such services include, among other things: a national e-Bill website, which allows payment of bill or taxes online through debit card or bank accounts; a centre for acquiring credit cards, which assists the banks in handling online credit card payments; and a platform that facilitates the individual's online personal banking services and the companies' payment through standard message forms such as extensible mark-up language or electronic data interchange.

45 Are there specific legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

When the use of cloud computing involves outsourcing the operations of a financial institution, relevant laws and regulations governing outsourcing activities should be complied with. In general, an outsourcing activity should follow the internal rules and procedures of the financial institutions, and in certain circumstances, prior approval from the FSC would be required. The use of cloud computing should also comply with the PDPA as described in question 41.

46 Are there specific legal requirements or regulatory guidance with respect to the internet of things?

No such legal requirements or regulatory guidance exists.

Tax

47 Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

Currently, there are no tax incentives specifically provided for fintech companies.

Generally, a company may credit up to 30 per cent of the corporate income tax payable for that year; up to 15 per cent of its total expenditure on research and development against its corporate income tax payable for that year; or up to 10 per cent of its total expenditure on research and development against its corporate income tax payable for each of the three years starting from that year, provided that it did not commit any material violation of any law on environmental protection, labour or food safety and sanitation in the past three years. In order to apply such tax credits a company must apply to and receive approval from the government.

Competition

48 Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction or that may become an issue in future?

As described in 'Update and trends', in April 2016, the FSC issued a press release pointing out the regulatory issues that may arise from peer-to-peer lending activities. According to such press release and the relevant news published in local newspapers, the FSC is of the view that: if it is arranged that the lender (as a member of the platform) splits the original credit into several parts and in turn allocates and 'sells' the divided parts to other 'members' for investment with high return, it might involve regulatory issues regarding multilevel marketing; or if the platform operators claim that the transaction has the nature of high return, low cost and low risk, it might constitute false or misleading advertising and would result in a violation of the Fair Trade Act. The above two issues are under the supervision of the Fair Trade Commission.

Financial crime**49 Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?**

Money laundering activities are mainly regulated by the Money Laundering Control Act (MLCA) (last amended on 13 April 13 2016) and its related regulations. Under the MLCA, in order to prevent money laundering activities, financial institutions are required to implement their own internal anti-money laundering guidelines and procedures and submit the same to the FSC for record. Such guidelines shall include the operational and internal control procedures of anti-money laundering, periodical on-job training for anti-money laundering, designation of personnel in charge of the supervision and implementation of the guidelines and other matters required by the FSC.

Since the said requirements apply to financial institutions only, a fintech company should not be subject to such requirements unless it is an FSC-licensed financial institution.

50 Is there regulatory or industry anti-financial crime guidance for fintech companies?

No.



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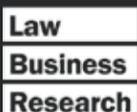
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ISSN 2398-5852



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