



ICLG

The International Comparative Legal Guide to:

Fintech 2018

2nd Edition

A practical cross-border insight into Fintech law

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EDITORIAL

Welcome to the second edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Three general chapters. These chapters provide an overview of artificial intelligence in fintech, the regulation of cryptocurrency as a type of financial technology, and fintech and private equity.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 44 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

The Fintech sector has continued its development in Taiwan. In February 2015, Taiwan's Legislative Yuan passed the Act Governing Electronic Payment Institutions to govern E-payment business in Taiwan ("E-Payment Act"). Also, in April 2015, the Financial Supervisory Commission ("FSC") issued the Rules Governing the Administration of Electronic Payment Business ("E-Payment Rules") and other regulations to regulate the business management of E-payment institutions. The E-Payment Act and E-Payment Rules enable E-payment companies to legally conduct a third-party payment business in Taiwan. In addition to the E-payment Act and E-Payment Rules, the FSC also issued the Fintech Development Strategy White Paper ("White Paper") in May 2016, proposed the draft of the Statute for the Fintech Innovation Experiment ("Fintech Innovation Act") on January 12, 2017, which has been passed by the Legislative Yuan on December 29, 2017. The FSC also approved the Self-Regulation Guidelines Governing Business Cooperation Between Member Banks of Bankers Association of the Republic of China and Peer-to-Peer Lending Platform Operators ("P2P Self-Regulation Guidelines") on December 1, 2017.

According to the White Paper, the FSC highlighted the following key policy directions for fintech in Taiwan: E-payment; blockchain; investment in fintech companies; banking industry (use of tokenisation technology for credit card transactions); securities industry (online services, automated trading mechanisms such as robot-advisory services and consolidated internet sale platform of mutual funds, cloud services, Big Data application); insurance industry (online insurance purchase, investment in fintech innovation and new insurance products, Big Data); virtual and physical branches; identity verification mechanism; regulatory updates; and risk management. Taiwan's Executive Yuan, the superior of the FSC, issued a press release in June 2017 that the FSC will continue supporting the development of fintech.

Besides, conducting finance-related activities in Taiwan generally requires a licence from the FSC. However, similar to the "regulatory sandbox" concept raised by Financial Conduct Authority in UK, the FSC will set up a fintech experiment mechanism under the Fintech Innovation Act to provide a safe environment for the development and testing of fintech, exempt fintech innovation from the current licence requirements for the financial business and stipulate applicable

regulations on fintech experiments. If a financial institution or non-financial institution plans to conduct fintech business in Taiwan, such institution may apply with the FSC for prior approval for its financial innovation experiments in accordance with the Fintech Innovation Act. If the permitted innovation experiment has any result and such result passes the FSC's review, the institution may apply for the FSC's approval to conduct that business.

The Legislative Yuan passed the "Fintech Innovation Act" on December 29, 2017. The Act became the first act for the "regulatory sandbox" in the civil law system. It is worth mentioning that the bill has two special characteristics: First, the experiment shall not exceed one-and-a-half years and could extend to an additional one-and-a-half years. Second, the FSC may propose the draft amendments to applicable financial regulations by reference of fintech innovation experiments and must report to the Legislative Yuan the latest fintech developments, results, and amendments to financial regulations.

Furthermore, the FSC has instructed the Bankers Association of the Republic of China ("BAROC") to draft the P2P Self-Regulation Guidelines and the FSC approved such Self-Regulations on December 1, 2017. According to the P2P Self-Regulation Guidelines, the P2P lending platform operators should not act as lenders. However, banks mandated by the P2P lending platform operators may provide services such as running credit checks and providing cash flow, cash custody and credit documents custody services. Also, banks may cooperate with P2P lending platform operators on banks' lending businesses and advertising activities. Accordingly, P2P lending platform operators may provide their P2P lending service together with banks under the Self-Regulations.

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

Please refer to our advice in question 1.1 above. Currently, the FSC does not issue any regulations or rulings to expressly prohibit any type of fintech business from financial innovation experiments under the Fintech Innovation Act.

In respect of cryptocurrency-based businesses, a report issued by Taiwan's Central Bank on virtual currency in March 2016 and the FSC's press releases in January 2016 both considered cryptocurrency to be a virtual currency issued by private entities to be used and accepted by members of a specific virtual currency community. However, since cryptocurrency is not a legal currency, the FSC in its press release has a clear position that financial institutions are not allowed to accept or exchange cryptocurrencies and are prohibited from providing cryptocurrency related services via bank ATMs.

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)?

Crowdfunding activity in Taiwan took a lead from the US JOBS Act crowdfunding rules and global fintech trends in crowdfunding to micro innovative enterprises for their funding needs. The two non-listed crowdfunding options in Taiwan (they are not IPO, see further requirement for an IPO advised in question 2.3 below) are as follows:

1. Non-equity-based crowdfunding – Gofunding Zone
Taipei Exchange set up the Gofunding Zone on August 19, 2013. The Gofunding Zone provides only information disclosure functions. The plan is to increase the exposure opportunities of domestic funding projects and enhance the credibility of funding platform providers to increase the willingness to engage in crowdfunding. Gofunding Zone is only subject to the information disclosure requirement and the investing funds shall be handled by the sponsors, sponsees and funding platform providers.
2. Equity-based crowdfunding – Go Incubation Board
Go Incubation Board provides an equity-based funding alternative to innovative enterprises. Enterprises listed on the Go Incubation Board of Taipei Exchange do not need to conduct an initial public offering. Instead, they are only required to, among other things, report the self-concluded financial statements (if the capital is less than NT\$30 million) and other material information and are subject to simplified periodical report requirements.

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?

Taiwan's Legislative Yuan passed the amendments to the Statute for Industrial Innovation on November 3, 2017 which has taken effect on November 22, 2017. According to Articles 23-1 and 23-2 of the newly amended Statute for Industrial Innovation, if a venture capital enterprise invests in an innovative enterprise (established for less than three years), while its paid-in capital meets the standard of each year (at least NT\$300 million in the fifth year since incorporation) and the total amount invested in the innovative enterprise reaches 35% of the paid-in capital or NT\$300 million (whichever is lower), or if an individual whose investment in an innovative enterprise reaches NT\$1 million and such individual has held the shares in the innovative enterprise for more than two years, the venture capital enterprise or the individual would be entitled to some tax benefits in accordance with the Statute for Industrial Innovation.

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

There are two securities exchanges in Taiwan: Taiwan Stock Exchange; and Taipei Exchange. In addition to the two non-listed crowdfunding options, Gofunding Zone and Go Incubation Board, offered by Taipei Exchange as advised in question 2.1 above, the two exchanges' major listing conditions for a Taiwanese company are as follows:

1. Taiwan Stock Exchange
 - Duration of Corporate Existence: Three years.

- Company Size: Paid-in capital or shareholders' equity reaches NT\$600 million or market capitalisation reaches NT\$1.6 billion.

- Profitability: The cumulative net income before tax for the most recent three fiscal years reaches NT\$250 million, and the net income before tax for the most recent fiscal year reaches NT\$120 million and the issuer has no accumulated deficits.

2. Taipei Exchange

- Duration of Corporate Existence: Two years.
- Company Size: Shareholders' equity reaches NT\$100 million.
- Profitability: The ratio of income before tax to shareholders' equity shall meet one of the following requirements, and the income before tax for the most recent year shall reach NT\$4 million: (i) most recent fiscal year: the ratio shall exceed 4%, and there shall be no accumulated deficit; or (ii) the last two fiscal years: the ratio shall exceed 3% in each year; or averages 3% over the two years and the ratio for the most recent year is better.

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

As fintech is a new and developing area in Taiwan, to our knowledge, there has not been any case of notable exits (especially an IPO) by the founders of fintech businesses so far.

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.

As advised in question 1.1 above, in February 2015, Taiwan's Legislative Yuan passed the E-Payment Act and the FSC has granted its approvals to five E-payment service providers (other than banks) to conduct the E-payment business in Taiwan. Also, on December 1, 2017, the FSC approved the P2P Self-Regulation Guidelines of BAROC for P2P lending platform operators and banks to work together for P2P lending service. In addition, the Fintech Innovation Act passed by the Legislative Yuan on December 29, 2017 is another fintech legislation to offer a safe harbour for fintech service providers to experiment with financial technology innovations in Taiwan.

3.2 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?

According to the legislative purpose of the Fintech Innovation Act, both the financial institutions proposing to conduct fintech business and the non-financial institutions proposing to use the information, internet or other technologies to conduct fintech business in Taiwan, may apply with the FSC for prior approval to conduct financial innovation experiments in accordance with the Fintech Innovation Act. We believe this is a good indication of Taiwan government's open-minded policy principles for fintech services.

3.3 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?

The Fintech Innovation Act does not stipulate that foreign fintech institutions may apply to the FSC directly for prior approval to conduct financial innovation experiments in accordance with the Fintech Innovation Act. Therefore, legally speaking, a foreign fintech institution may only handle relevant matters in accordance with the Fintech Innovation Act after it establishes a branch or a subsidiary in Taiwan.

In addition, if the foreign fintech institution is an E-payment institution and it proposes to conduct E-payment business in Taiwan, such foreign fintech institution shall establish an E-payment institution in Taiwan and apply for the FSC's prior approval under the E-Payment Act. If it proposes to cooperate with a Taiwanese E-payment institution for the Taiwanese E-payment institution to handle the payment and collection relating to local fund flow on its behalf, the Taiwanese E-payment institution shall apply for the FSC's prior approval to cooperate with the foreign E-payment institution under Article 14 of the E-Payment Act.

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?

In Taiwan, the Personal Data Protection Act (the "PDPA") is the general law regulating the collection, processing and use of personal data, and all enterprises in Taiwan, including fintech enterprises, will be subject to the PDPA. The main competent authority of the PDPA is the Ministry of Justice ("MOJ") which issues various rulings in accordance with the PDPA. In addition, each government agency may also issue its regulations under the PDPA to regulate the companies under its supervision. For example, the FSC also regulates local banks' compliance with the PDPA. The local regulators' interpretations of the PDPA are not binding upon Taiwan courts, but would usually be consulted as references by Taiwan courts in rendering their judgments.

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?

Under the PDPA, any non-governmental agencies which include any natural persons, juristic persons and unincorporated associations other than government agencies, must comply with the PDPA when collecting, processing or using an individual's personal data within Taiwan. The PDPA also provides that any collection, processing or use of personal data of a Taiwanese individual by any non-governmental agency outside Taiwan should comply with the requirements of the PDPA.

In addition, according to a ruling issued by the MOJ on August 26, 2015, the collection, processing or use of an individual's personal data by a foreigner or a foreign company within Taiwan is also subject to the PDPA, regardless of whether such foreign national or entity is registered in Taiwan.

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

Where a non-government agency violates the PDPA, the competent authority has the power to impose administrative fines and/or rectification orders on it. In addition, the following major breaches may lead to individual criminal liability of the violator:

- illegal collection, processing or use of personal data with the intent to make unlawful profits for itself or a third party, or with the intent to damage the interests of another, causing injury to another (Article 41 of the PDPA); and
- illegal change or deletion of personal data files or employment of any other illegal means with the intent to make unlawful profits for itself or a third party, or with the intent to damage the interests of another, thereby impeding the accuracy of personal data files and causing injury to another (Article 42 of the PDPA).

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

The Security Control and Procedure Standards for Financial Institutions Handling E-Banking Business are the main regulations governing the security requirements applicable to banks which conduct E-banking business. Also, the Regulations Governing the Standards for Information System and Security Management of Electronic Payment Institutions are the main regulations governing the security requirements applicable to E-payment institutions. In addition, the Security Control and Procedure Standards for Financial Institutions Handling E-Banking Business are the main regulations governing the security requirements applicable to banks which cooperate with P2P lending platforms in respect of P2P business.

The Fintech Innovation Act does not clearly provide that fintech business would be subject to the security requirements under said regulations. However, since a fintech enterprise must apply with the FSC for prior approval to conduct financial innovation experiments, we believe that the FSC will review the applicant's proposed security measures on a case-by-case basis in order to ensure that such measures can protect the transactions involved and the interests of its customers.

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

The Money Laundering Control Act imposes certain AML requirements on financial institutions and certain non-financial institutions (including enterprises and their employees where the business and transaction type make them easily used as a money laundering channel). This includes the adoption of certain KYC and AML measures and the reporting of AML suspicious transactions to the Investigation Bureau, MOJ. The MOJ announced on February 19, 2014 that third-party payment service operators will be subject to the requirements of the Money Laundering Control Act.

In addition, the Counter-terrorism Financing Act in Taiwan also requires institutions regulated by the Money Laundering Control Act to report to the Investigation Bureau, MOJ if they are aware, (i) that they hold or manage the properties or property interests of any sanctioned person, or (ii) the place where the properties or property interests of the sanctioned person are located.

The Fintech Innovation Act does not exempt an applicant from application of the Money Laundering Control Act and the Counter-terrorism Financing Act. The financial institutions and the non-financial institutions proposing to conduct fintech business therefore shall still comply with the anti-money laundering and counter-terrorism financing laws and regulations issued by the FSC and other relevant government agencies.

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

In addition to the Fintech Innovation Act, the FSC can amend the relevant laws and regulations to clearly provide that the relevant financial enterprises follow the Fintech Innovation Act to conduct financial innovation experiments, which include the Banking Act, Insurance Act, Securities and Exchange Act, Futures Trading Act, E-Payment Act, Act Governing Issuance of Electronic Stored Value Cards, Securities Investment Trust and Consulting Act, Trust Act and Financial Consumer Protection Act. The FSC also can instruct the BAROC to amend the P2P Self-Regulation Guidelines.

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?

The Labor Standards Act (“LSA”) and the relevant regulations govern the major employment requirements in Taiwan.

Employment terms and conditions agreed to by an employer and an employee should be no less favourable than the minimum/mandatory requirements set forth under the LSA and the relevant regulations, otherwise they are null and void and will be superseded by the corresponding provisions prescribed under the LSA. For employment terms and conditions not stated in an employment contract or the employer’s work rules/policies, the legal minimum/mandatory requirements shall apply. For employment terms and conditions provided in an employment contract or the employer’s work rules/policies which are more favourable than the legal requirements, such favourable terms and conditions shall prevail.

As to the termination of the employment contract, an employer should not terminate an employment contract unilaterally unless any of the events specified in Article 11 (layoff with advance notice and severance pay) or Article 12 (dismissal without notice or pay) of the LAS occurs.

In addition, Taiwan’s Legislative Yuan passed the amendments to the LSA on December 6, 2016 which has taken effect on January 1, 2017. The key points of the amendments to the LSA include: implementation of a five-day work week; a sharp increase in overtime pay for working on a rest day; reduction of public holidays; increase in the number of annual leave days; method of arranging annual leave and payment for unused annual leave; rest time between shifts; employers’ obligation to provide information on wage calculation; protection of whistle-blowers’/workers’ rights to file complaints; and raising fines for violations of the LSA. The amendments have significant impact on employers’ costs and their human resource management.

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

The main mandatory employment benefits provided under the LSA include salary, overtime pay, breaks, public holidays, annual leave, statutory leave with pay (such as wedding leave, funeral leave, pregnancy check-up leave, etc.), statutory social insurance (including Labour Insurance and National Health Insurance), statutory pension and compensation for occupational hazards.

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?

According to the Employment and Service Act, no foreigner may work in Taiwan without a work permit from the labour authority, which should be applied for by his/her employer. In accordance with the regulations governing the employment of foreign employees, the Taiwan branch of a foreign company or a company invested in by foreigners with approval of the IC may apply with the Ministry of Labour for the work permits required for employing foreign employees as technicians or managerial officers of the applicant company, provided that the requirements of the employer and the foreign employee set forth in the relevant rules and regulations are met. Therefore, work permits are required before those employees start working in Taiwan.

6 Technology

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

Innovations and inventions can be protected with intellectual property rights such as patent, copyright or trade secret in Taiwan in accordance with the Patent Act, Copyright Act and Trade Secret Act. As to patent, an inventor may file an application with Taiwan’s Intellectual Property Office, and the patent right will be obtained and protected under the Patent Act once the application is approved. Local and foreign companies may also register their trademarks in Taiwan with Intellectual Property Office under the Trademark Act. For copyrights and trade secrets, there is no registration or filing requirement for a copyright or a trade secret for the protection under Taiwan law. However, certain requirements under the Copyright Act and the Trade Secret Act must be met in order to qualify as a “protected” copyright or trade secret, such as “originality” and “expression” for a copyright, and “economic valuable” and “adoption of reasonable protection measures” for a trade secret.

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

As to patent, if an invention is made by an employee during the course of performing his or her duties under employment, the right to the invention shall be vested in his or her employer and the employer shall pay the employee reasonable remuneration unless otherwise agreed by the parties. If an invention is made by a contractor, the agreement between the parties shall prevail, or such rights shall be vested in the inventor in the absence of such agreement. However, if there is a funding provider, the funding provider may use such invention.

As to trade secrets, if a trade secret is the result of research or development by an employee during the course of performing his or her duties under employment, it shall belong to the employer unless otherwise agreed by the parties. If a trade secret is developed by a contractor, the agreement between the parties shall prevail, or such rights shall be vested in the developer in the absence of such agreement. However, if there is a funding provider, the funding provider may use such invention.

For copyright, if 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. If a work is developed by a contractor, the contractor 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 in the absence of such agreement. However, the commissioning party may use the work.

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 to patent, as advised in question 6.1 above, an inventor must file an application with Taiwan's Intellectual Property Office, and the patent right will be obtained once the application is approved.

As to trade secret and copyright, as advised in question 6.1 above, there is no registration or filing requirement for a copyright or a

trade secret to be protected under Taiwan law. Trade secrets will be protected under the Trade Secret Act if they satisfy the following constituent elements: (i) information that may be used in the course of production, sales or operations; (ii) having the nature of secrecy, with economic value; and (iii) adoption of reasonable protection measures. However, a foreigner's trade secrets will not be protected under the Trade Secret Act if the foreign national's home country has not signed a bilateral trade secrets protection treaty or agreement with Taiwan or if they do not meet the "reciprocity" requirement. Since Taiwan's accession to the WTO as of January 1, 2002, the trade secrets of natural or juristic persons of WTO members which satisfy the aforementioned constituent elements may likewise enjoy trade secret protection under reciprocity principle.

For copyright, it subsists upon the completion of a work rather than the registration of the work. A foreigner's works may enjoy copyright protection under the Copyright Act if they meet either "First Publication" or "Reciprocity" requirement. Since Taiwan's accession to the WTO as of January 1, 2002, the works of natural or juristic persons of WTO members enjoy the same copyright protection under the reciprocity principle.

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

In local practice, generally, a patent, copyright or trade secret could be exploited/monetised by way of licensing or transfer to another entity.

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Benjamin K.J. Li is a senior attorney in the Banking and Capital Markets Department of Lee and Li. Mr. Li advises financial institutions on regulatory compliance issues, applications and permits, syndicated loans and drafting and review of relevant transaction documents for relevant businesses. He also has extensive experience in mergers and acquisitions, disposal of non-performing loans by financial institutions, IPOs and drafting bills (such as E-Payment related regulations and P2P Self-Regulation Guidelines).



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