

# Fintech

*Contributing editors*

Angus McLean and Penny Miller



2019

GETTING THE  
DEAL THROUGH

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# Fintech 2019

*Contributing editors*  
**Angus McLean and Penny Miller**  
**Simmons & Simmons**

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# Preface

## Fintech 2019

Third edition

**Getting the Deal Through** is delighted to publish the third edition of *Fintech*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://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](http://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 continued assistance with this volume.

GETTING THE   
DEAL THROUGH 

London  
August 2018

# Taiwan

Abe T S Sung and Eddie Hsiung

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, credit cards and electronic stored-value cards: see question 12.

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

A local licensed bank may carry out 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 one of a company's registered business activities 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, in nature, is not legally attachable. The receivable under loans, subject to (ii) above, are generally transferable. But 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 providing alternative finance products or services 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 allowed 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 (except that SITEs and securities firms are now permitted to set up a subsidiary to act as the general partner of a private equity fund under the structure of limited partnership). 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 allowed 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 out 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.

While to date there are no laws or regulations specifically regulating or governing peer-to-peer (P2P) lending, the Bankers Association of the Republic of China (Bankers Association), the self

disciplinary organisation of the banking industry, has promulgated a Self-Disciplinary Rules of Business Cooperation between Member Banks of Bankers Association and Peer-to-Peer Lending Operators (P2P Self-Disciplinary Rules) and such P2P Self-Disciplinary Rules have been filed with the FSC for record.

According to the P2P Self-Disciplinary Rules, banks may work together with the P2P lending operators on the following businesses:

- providing fund custodian service by a bank;
- providing cash flow service by a bank;
- providing credit review and rating services by a bank;
- extending facility by a bank to the customer (ie, the 'P2B' model);
- advertising and marketing activities; and
- providing credit document custody service by a bank.

## 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 (SEA).

### 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. The regulations governing the GISA were recently amended in March 2018.

A company 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, the 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\$50 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. However, in May 2018, the TPEX announced that due to the significant developments in the crowdfunding business, the phased task of TPEX to support such business has been completed, and thus it decided to close the Gofunding Zone and annulled relevant rules.

## 10 Describe any specific regulation of automated investment advice in your jurisdiction.

In June 2017, the Securities Investment Trust and Consulting Association of Taiwan (SITCA), the self-disciplinary organisation of the asset management industry, issued 'Operating Rules for Securities Investment Consulting Enterprises Using Automated Tools to Provide Consulting Service (Robo-Advisor)' (Robo-Advisor Rules), which was approved by the FSC. Pursuant to the Robo-Advisor Rules, securities investment consulting enterprises (SICEs) may provide on-line securities investment consulting services by using automated tools through algorithm (Robo-Advisor Services), and must comply with certain rules, which include, among others, the following:

- periodical review of the algorithm;
- relevant Know-Your-Customer procedures should be conducted before provision of advice;
- a special committee should be established to supervise the adequacy of the Robo-Advisor Services; and
- the customers should be informed of precautions before using Robo-Advisor Services.

## 11 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.

## 12 Are payment services a regulated activity in your jurisdiction?

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

Non-banks engaging in credit card-related business and issuance of electronic stored-value cards should also obtain approval from the FSC.

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.

## 13 Do fintech companies that wish to sell or market insurance products in your jurisdiction need to be regulated?

In Taiwan, selling insurance products will be considered as conducting insurance business, which requires an insurance licence from the FSC. A fintech company is not permitted to sell any insurance products without an insurance licence from the FSC.

## 14 Are there any legal or regulatory rules in your jurisdiction regarding the provision of credit references or credit information services?

Yes. Pursuant to the Banking Act and relevant regulations, an entity collecting credit-related information from financial institutions, processing such information and maintaining the relevant database and providing credit-related information and records to financial institutions for credit-checking purposes must obtain prior approval from the FSC. Currently, the Joint Credit Information Center (JCIC) is the only FSC authorised entity that offers such services. In practice, a bank would normally review the credit information or records provided by the JCIC as part of the bank's credit investigation on an applicant for a credit extension.

If an entity is not considered as offering such services, no FSC approval is required, but it will still be subject to the Personal Data Protection Act (PDDPA) regarding its collection and use of any personal data. See question 42 for regulations on collection and use of personal data.

**15 Are there any legal or regulatory rules in your jurisdiction that oblige financial institutions to make customer or product data available to third parties?**

Yes. While the FSC has the general power to request the provision of customer or product data by financial institutions to the FSC, in practice, the FSC's relevant regulations, directions or guidelines also require that financial institutions provide relevant customer and product data (such as data relating to credit extensions, credit cards, derivatives, etc) to the JCIC.

**16 Does the regulator in your jurisdiction make any specific provision to encourage the launch of new banks?**

According to a press release on 26 April 2018, the FSC is proposing to allow the launch of 'internet-only' banks (ie, banks without physical branches) in the future. The principles of this new policy include:

- number of 'internet-only' banks should be limited to two;
- minimum paid-in capital: same as the requirement for establishing a commercial bank;
- business scope: same as commercial banks;
- promoters: there should be at least one bank or financial holding company to act as the promoters, and the percentage of shares held by such banks or financial holding companies should be 50 per cent or more;
- it should propose a successful business model; and
- an 'internet-only' bank can have physical places for the head office and customer service centres.

As of the date of this article, the FSC is still collecting advice and opinions on the above proposal from the general public.

**17 Describe any specific rules relating to notification or consent requirements if a regulated business changes control.**

The rules relating to notification or approval requirements for change of control of a financial services company vary among the types of companies. For example:

- Bank: a prior approval must be obtained from the FSC if an investor or its related parties has individually, jointly or collectively acquired or held more than 10 per cent, 25 per cent or 50 per cent of the voting shares of a bank.
- Securities firm: no prior approval from the FSC is required.
- SITE: if the professional shareholder of a SITE intends to transfer its shareholding in the SITE, the SITE should report to the FSC the transfer of shares before the transfer is conducted.
- SICE: no prior approval from the FSC is required.

**18 Does the regulator in your jurisdiction make any specific provision for fintech services and companies? If so, what benefits do those provisions offer?**

To promote fintech services and companies, the regulators in Taiwan promulgated a law for the fintech regulatory sandbox, the FinTech Development and Innovation and Experiment Act (Sandbox Act), on 31 January 2018, which took effect on 30 April 2018. The Sandbox Act was enacted to enable fintech businesses to test their financial technologies in a controlled regulatory environment. In April 2018, the FSC promulgated the enforcement rules for the regulatory sandbox.

According to the Sandbox Act, an applicant needs to obtain approval from the FSC before entering the sandbox. Once approved, the experimental activities may enjoy exemptions from certain laws and regulations (such as FSC licensing requirements and certain legal liability exemptions). According to the Sandbox Act, any experimental activity needs to be 'innovative'.

After completion of the approved experiments, the FSC will analyse the results of the experiments. If the result is positive, the FSC would actively examine the existing financial laws and regulations to explore the possibility of amending them so that the business model or activity previously tested in the sandbox could become legally feasible.

It is said that some market players of fintech business models and activities (which is not feasible under current legal regime) might wish to apply to the FSC to enter the sandbox. This is generally expected that the first application for entering the sandbox would be submitted in the second quarter of 2018.

**19 Does the regulator in your jurisdiction have formal relationships or arrangements with foreign regulators in relation to fintech activities?**

In March 2018, the FSC and the Financial Supervision Authority of Poland signed a fintech cooperation agreement. The agreement sets out a framework for referral mechanism, information sharing, potential joint innovation projects and so on, between the two parties. The framework enables both regulators to refer start-ups to the other, provide support to allow the regulatory regime in each jurisdiction to be better understood, and share related information on their respective markets and innovations in financial services. It is the first time the FSC has entered into a fintech-related agreement with foreign regulators.

**20 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.

**21 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.

**22 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.

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

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.

**Distributed ledger technology**

**24 Are there any legal or regulatory rules or guidelines in relation to the use of distributed ledger (including blockchain) technology in your jurisdiction?**

No.

**Digital currencies**

**25 Are there any legal or regulatory rules or guidelines applicable to the use of digital currencies or digital wallets, including e-money, in your jurisdiction?**

Digital currencies (such as the 'virtual currencies' or 'cryptocurrencies' with the applications of blockchain technology), which are not linked or tied to the currency of any nation, are currently not accepted by the Central Bank of the Republic of China (Taiwan) (Central Bank) as currencies. In December 2013, both the Central Bank and the FSC expressed the government's position on 'bitcoin' by issuing a joint press release (2013 Release). According to this, the two authorities held that

bitcoin should not be considered a 'currency', but highly speculative digital 'virtual commodity'. In another FSC's press release in 2014 (2014 Release), the FSC ordered that local banks must not accept bitcoin or provide any other services related to bitcoin (such as exchange bitcoin for fiat currency). Recently, the FSC further issued a press release on 19 December 2017 (2017 Release), in which the FSC reiterated the government's positions as specified in the 2013 Release and 2014 Release. Other than the above and the press release on ICOs (see question 27), no laws, regulations or rulings were officially issued, promulgated, or amended to specifically deal with the rise of digital currencies.

As to digital wallets, see question 12 regarding FSC approval that may be required for non-banks issuing 'electronic stored-value cards' or acting as an 'electronic payment institution'. Banks providing mobile payment services must comply with relevant FSC rules on, among others, security control.

**26 Are there any rules or guidelines relating to the operation of digital currency exchanges or brokerages in your jurisdiction?**

Further to our response in question 25, so far no Taiwanese laws or regulations have been promulgated or amended to formally regulate the operation of digital currency exchanges or brokerages in Taiwan.

**27 Are there legal or regulatory rules or guidelines in relation to initial coin offerings (ICOs) or token generating events in your jurisdiction?**

In response to the rising amount of ICOs and other investment activities regarding digital currencies and cryptocurrencies, the FSC also expressed the following views on ICOs through the 2017 Release (see question 25):

- The classification of an ICO should be determined on a case-by-case basis. If an ICO involves offer and issue of 'securities', it should be subject to the SEA (Securities and Exchange Act). The issue of whether tokens in an ICO would be deemed 'securities' under the SEA would depend on the facts of each individual case.
- If any misrepresentations with respect to technologies or their outcomes or promises of unreasonably high returns are used by the issuer of virtual currencies or an ICO to attract investors, the issuer would be deemed as committing fraud or illegal fund-raising.

Other than the above, no laws, regulations or rulings were officially issued, promulgated, or amended to specifically deal with the rise of ICOs.

**Securitisation**

**28 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 needs not deliver the possession thereof to the mortgagee; however, a registration with the competent authority will be necessary in order 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. 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 cases of P2P lending.

**29 What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? May these loans be assigned without informing the borrower?**

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.

**30 Will the securitisation be subject to risk retention requirements?**

There are no mandatory risk retention requirements for securitisation as prescribed for in the Financial Asset Securitization Act of Taiwan.

**31 Would a special purpose company for purchasing and securitising peer-to-peer or marketplace 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 42 for regulations regarding collection and use of personal data.

**Intellectual property rights**

**32 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.

**33 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 a technical effect in 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.

**34 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 will be vested in his or her employer and the employer should 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 will 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, the employee is the author of the work but the economic rights to such work will be enjoyed by the employer unless otherwise agreed by the parties.

**35 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 will prevail, or such rights will 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 should be agreed by the parties, or such rights will be enjoyed by the contractor or the consultant in the absence of such agreement. However, the commissioning party may use the work.

**36 Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?**

In respect of patents and trademarks, each joint owner may use the jointly owned rights at his, her or its discretion; however, a joint owner may not license or assign the jointly owned rights without consent of all the other joint owners.

In respect of copyrights and trade secrets, each joint owner may not use, license or assign the rights without unanimous consent of the other joint owners, while the other joint owners may not withhold the consent without reasonable cause.

**37 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.

**38 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.

**39 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.

**40 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

**Update and trends**

**Virtual currencies, cryptocurrencies, exchange operators and ICOs**

The governance of cryptocurrency transactions, exchange operators and ICOs is a trending topic in Taiwan, and several public hearings and seminars have been held to discuss it. Some suggested that the regulators or legislators should enact a new law to specifically regulate the exchange operators, but others proposed establishing a self-disciplinary organisation to set out relevant self-disciplinary rules for cryptocurrency-related activities, including ICOs. Nevertheless, it is still uncertain as to whether and how any law or regulation will be promulgated or amended to specifically deal with the rise of cryptocurrency transactions, exchange operators and ICOs (except for the anti-money laundering issue advised in question 51).

**Regulatory sandbox**

See question 18.

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 no more than 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 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.

**41 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.

**Data protection**

**42 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,

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.

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

There are no such requirements or regulatory guidance.

**44 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.

**Outsourcing, cloud computing and the internet of things**

**45 Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?**

The legal requirements with respect to the outsourcing by a financial services company vary among the types of companies. For example, a bank's outsourcing must comply with the Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation (Banks Outsourcing Regulations), under which only the activities enumerated in the Banks Outsourcing Regulations can be outsourced (subject to relevant requirements such as supervision of the outsourced party, the contract with the outsourced party, etc), and outsourcing of some activities would require prior approval from the FSC.

As for other financial services companies, there exists no single regulation that governs their outsourcing activities, and generally outsourcing is allowed only if the FSC has issued any ruling permitting it. For example, a SITE is permitted to outsourcing its operation of evaluating fund assets, calculation of a fund's net worth and fund accounting to a professional institution, subject to applicable requirements specified under the relevant FSC rulings.

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

According to the White Paper (published by the FSC on 12 May 2016), 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 bills 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.

**47 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 42.

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

No such legal requirements or regulatory guidance exists.

**Tax**

**49 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 choose to credit either:

- 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 the deduction amount should not exceed 30 per cent of the corporate income tax payable for the company in that year and 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**

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

In April 2016, the FSC issued a press release pointing out the regulatory issues that may arise from P2P lending activities. According to this and other sources, the FSC is of the view that:



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- 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.

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### Financial crime

#### 51 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 28 December 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 them to the FSC for record.

Such guidelines should 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. The newly amended MLCA also requires certain non-financial institutions such as lawyers, accountants and real estate brokers to, among others, check and verify the identity of a client; keep transaction records in archives; and report any suspected money laundering activities to the regulators.

Since the requirements apply to financial institutions and certain types of non-financial institutions only, a fintech company will not be subject to such requirements unless it is an FSC-licensed financial institution or belongs to any type of the non-financial institution that are subject to the MLCA.

Please note that it has been reported that the regulators are considering incorporating using or receiving cryptocurrencies, as well as the exchange operators, into the local anti-money laundering regime. The issue of whether to require the market participants to use their 'real names' in cryptocurrency transactions is being widely discussed.

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

No.

## *Getting the Deal Through*

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Appeals  
Arbitration  
Art Law  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Aviation Liability  
Banking Regulation  
Cartel Regulation  
Class Actions  
Cloud Computing  
Commercial Contracts  
Competition Compliance  
Complex Commercial Litigation  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Reorganisations  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Compliance  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gaming  
Gas Regulation  
Government Investigations  
Government Relations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Joint Ventures  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans  
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Private M&A  
Product Liability  
Product Recall  
Project Finance  
Public M&A  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Real Estate M&A  
Renewable Energy  
Restructuring & Insolvency  
Right of Publicity  
Risk & Compliance Management  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
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