

# ALLEN & OVERY



## Fintech

2019

*“Widely recognised as a legal powerhouse in the UK FinTech sector”*

Chambers Fintech Guide 2019: UK-wide

*“Allen & Overy has a sophisticated FinTech group capable of working flexibly both with startups and major financial institutions looking to incorporate innovative technologies in their businesses.”*

Chambers Professional Advisers: Fintech 2018

*“Offers expertise across the TMT sector, and handles mandates spanning multiple jurisdictions. Provides full coverage of key practice areas, including regulatory compliance, competition, litigation, M&A, outsourcing and financings. Notable activity in emerging areas such as financial technology, big data and cloud computing.”*

Chambers Global 2015 (TMT: Global-wide)

*Ranked Tier 1 for Financial Services Regulatory: Non-contentious*

IFLR1000, UK, 2017

# Fintech

Fintech describes the intersection between finance and technology.

Market participants may be providers of technological solutions which bring innovation to traditional financial services companies or they may be companies delivering innovative financial services offerings which disrupt the existing financial services market.

What unites Fintech players is the pursuit of new ideas and business models to bring digital transformation to all aspects of the heavily regulated financial services industry.

Today's Fintech market has been characterised by a period of significant growth. However it is also a crowded space in which participants need to have a clear competitive edge to survive. As the market matures survival or failure can increasingly be ascribed to success in certain key areas. These are:

- Getting regulatory compliance right;
- Making the right partnerships at the right time on the right terms; and
- Driving adoption by ensuring excellent user experience.

With a track record of providing high-quality and innovative legal advice, Allen & Overy is ideally placed to guide market participants through all business and legal issues in this thriving sector. As a recognised banking powerhouse we have a huge knowledge base and extensive experience of advising on financial services regulation. In addition, our strong connections with the leading financial services authorities mean we can support our clients in all their dealings with local regulators. We marry this regulatory expertise with deep and broad experience in the technology sector. We have advised on some of the cornerstone projects in the banking technology market and we also work with some of the most successful technology companies of the 21st century. From growth companies to established market players, we know what it takes to succeed in Fintech.



*Band 1*

Chambers Professional Advisers: Fintech 2018



*Tier 1*

UK Legal 500 Fintech 2019



*Band 1*

Chambers Fintech Guide 2019: Global-wide



# How technology is transforming finance



## Payments

Banks, cards schemes and acquirers and payment processors are the traditional players in the payments landscape. New entrants focus on taking the “friction” out of the payments process and include providers of mobile payments, contactless and eWallets. Trends in this area include further developments with biometric identification, implementations of platforms using distributed ledger technology and greater use of big data to halt fraudulent payments.



## Insurance

One of the slower areas of Fintech to take off, insurtech is now gathering steam. Investment is being driven in particular by established insurers investing in new market entrants, and hot areas of technology include blockchain and smart contracts, data analytics and Internet of Things applications which can assist with risk identification and mitigation.



## Investment management

Cloud and big data have already rung the changes in the investment management industry but a new shift has come with the application of machine learning and artificial intelligence – and thereby the arrival of the robo-adviser.



## Fundraising

Crowdfunding (both equity and reward-based) has become an established part of the early stage company market, particularly for consumer facing companies for which engagement with investors is all part of the spectrum of engaging customers. Platform-based tech has also facilitated the rise of syndication of early stage investment, particularly in the angel market where a syndicate typically allows less experienced investors to co-invest with more established leads.



## Process efficiencies

For many, Blockchain is the perfect example of the evolutionary power Fintech can have on process optimisation. But Regtech is another subsector of the process efficiencies market to receive significant investment and interest. Regtech applications look to save organisations time and money by automating processes to ensure regulatory compliance. They also offer the possibility of more accurate compliance efforts, and better reporting to supervisory authorities.



## Deposits and lending

Peer-to-peer or marketplace lending is the most prominent example of the impact of Fintech on deposits and lending. This part of the market has matured to show a particular symbiosis between established players and new entrants, with P2P lenders, for example, picking up the portion of the SME lending market in which banks on the whole had preferred not to participate since the financial crisis. P2P lenders have turned to established institutions in other ways also, such as by pushing out parcels of loans to hedge funds and other institutional investors via their online marketplaces (something that has arguably given P2P platforms greater exposure to the credit cycle than the “pure” P2P model).

# Legal and regulatory issues

## Regulatory requirements

Regulatory compliance is fundamentally important to Fintech companies, and can be a key competitive advantage, but navigating the relevant regulatory regimes is a significant headache for many.

Most Fintech companies will have undertaken a detailed analysis of their business model against applicable financial regulation to fully understand what can be achieved without becoming a regulated entity, or, conversely, to help them seek appropriate licences or approvals. However attempts to map regulation can be complicated by the fact that it can be very hard to assess whether innovative new products fall within the regulatory regimes, and if they do, how the various requirements might apply. This problem is compounded for Fintechs scaling internationally, where different regulatory approaches in other jurisdictions can create additional hurdles (albeit the UK's "Fintech Bridges" initiative is one example of attempts to mitigate such problems).

Regulatory uncertainty makes business planning very difficult, and indeed the financial and compliance cost of regulation has been sufficient to see some new companies exit the market. A clear-sighted assessment of regulatory risk is fundamental to Fintech success.

## Dealing with data

Data is central to the business models of many Fintechs, whether they are focusing on retail or investment banking.

Companies that are able to derive business insights from financial services data can spot and maximise new opportunities and reduce risk. Unlocking this value is however dependent on far more than clever algorithms and exponential processing power. It is also essential that companies in this space build and maintain the trust of consumers and other stakeholders. As a result, concepts of security and transparency are essential industry principles in the Fintech sector – for both reputational and compliance reasons.

There is significant regulatory activity in this area. Aside from the obvious legislative changes affecting data handling and cybersecurity, such as the implementation of the new General Data Protection Regulation in Europe, a shift to open banking is a further complication on the data horizon. The new European Payment Services Directive (PSD2), the UK's recent retail banking market investigation from the Competition and Markets Authority and the promotion of data sharing by the Monetary Authority of Singapore are all examples of how regulators across the globe are focusing on data as a way to bring change to the traditional vertically integrated banking model.

Such changes require considerable sophistication from data owners and processors. In particular, there is a tension between the concept of open innovation as a route to bringing new players into the market, and the appetite for more control and ownership over data (as a valuable business asset). Intellectual property concerns, as well as

privacy considerations, loom large here. The growth of new data handling models may also foster a "co-creation" environment in financial services where partnerships (eg JVs, strategic alliances etc) might be the optimum way to bring diverse parties together.

## Protecting innovation

The development of innovative software and technology by Fintech companies has been critical to the rapid expansion in this sector. Legal protection for such innovation is integral to success in the Fintech sector, but the availability of protection varies from jurisdiction to jurisdiction. While business methods were previously thought to be patentable in the U.S. this has become increasingly difficult through recent case law. In Europe, meanwhile, they are per se unpatentable unless they can be shown to solve a 'technical problem'. Given these difficulties, Fintech companies must consider carefully the availability of other IP rights, such as copyright and trade secrets, as well as protecting themselves through contractual arrangements with their customers, employees, suppliers and/or other third parties.

A strategic challenge in areas such as blockchain is how to balance the protection of ideas and technology with the desire to encourage industry-wide adoption. Where there may be so-called "network effects" from new technology, the timing for seeking to register and/or enforce intellectual property rights is critical. Done too soon and the risk is that innovation is stifled, left too late and

it is possible to be locked out of the market by peers and competitors.

The importance of intellectual property to Fintech companies may also make them a target for patent trolls, which may cause business disruption unless the Fintech enters into licensing discussions or is prepared to fight a claim in the courts.

## Collaborating, investing and acquiring to bring innovation into the business

Many established financial institutions recognise the benefit that financial innovators are bringing to the market. Frequently financial institutions look to partner with emerging technology players to speed up the innovation cycle.

A fundamental question is what form that collaboration might take. The heat in the Fintech market is certainly driving M&A as companies buy in technology and skills or combine with peers to build scale, but commercial collaborations are also a popular route to achieving these goals. Equally, corporate venturing may offer a way to connect with early-stage

companies to assess potential technologies, exert a degree of influence on the future direction of the emerging company and be in a good position to acquire or license technology if it looks to be shaping up well.

To make a success out of any of these transactions, both parties need to determine how to accommodate the objectives and needs of what may typically be two very different organisations. This relationship dynamic impacts deal negotiation, the due diligence process (including the all-important regulatory due diligence), and how the commercial aspects of the deal are structured.

## Sources of funding

The environment for growth companies is changing. A rising number of private companies (and particularly “unicorns” – those with valuations of over USD1 billion) have successfully completed either more private funding rounds or larger private funding rounds (or both). This enables these companies to fund direct growth rather than capital investment from injections of cash from private investors.

The group of investors participating in late stage private company rounds has also expanded. This area is no longer solely the preserve of traditional venture capitalists; we are seeing sovereign wealth funds, asset managers and hedge funds, as well as corporate venture funds, participating in this section of the market. These investors are joining the market for reasons that range from straightforward portfolio diversification through to opportunities to spot and nurture emerging talent and innovation to build research pipelines.

With more companies staying private longer, and with a wider range of investors operating in this segment of the market, how do companies decide which funding option is right for them? One key criteria is aligning the investor’s timetable for exit with the company’s growth plans. Another consideration will be planning for a liquidity event in the future – whatever funding options are considered now must not have the effect of making it harder to, for example, gain access to the public markets at a later date.

*Ultimately, the challenge faced by all those in the Fintech market is how to capture innovation while preserving the stability of the banking network. Facebook’s mantra, “Move fast and break things”, is a great one for many emerging companies – but perhaps more problematic for companies operating in highly regulated areas such as financial services. Within the Allen & Overy team we have the unique combination of resources to help market participants successfully navigate this path.*

# Our experience

## Aegon

on a number of fintech-related projects including its investment and strategic partnership with Jungo, a Dutch fintech spin off of IT Company Topicus, that is building an innovative platform that makes it possible to invest in Dutch mortgages as a private investor and also on the formation of a strategic partnership with Chytrý Honza, a leading Czech fintech company. We also advised on the disposal of its shareholding in Chytrý Honza, a leading Czech fintech company.

## Funding Circle Goldman Sachs and Numis

on the IPO of Funding Circle SME Income Fund (by way of a GBP150m placing and offer for subscription and placing programme).

## The NAGA Group AG

on one of Europe's largest Fintech Series A investments in 2017 by FOSUN International, a leading Chinese investment group. Founded in August 2015, Hamburg-based NAGA's mission is to develop, market and grow disruptive applications in financial technology.

## Rabobank

on the acquisition of a 22% stake in the KBC subsidiary Fin-Force, a Belgian a joint venture of KBC and EDS that processes cross-border payment transactions and cheques. Simultaneously Rabobank entered into an outsourcing arrangement with Fin-Force.

## BACS and Faster Payments

the UK inter-bank payment systems, on their scheme rules, settlement arrangements, technology development and maintenance contracts for processing of payments in the UK.

## Eurogiro

a unique payments network that connects different payments "ecosystems", eg postal organisations, post banks, commercial banks and other payment service providers, on its acquisition by Inpay, a regulated and licensed Danish Fintech.

## KASIKORNBANK (KBank)

on a major managed services, transformation and insourcing project with IBM to bring about the establishment of five shared IT service companies within KBank and bring about the restructuring of KBank's IT operations to enable KBank to pursue its digital banking ambitions unencumbered by its historical terms with IBM.

## A financial institution

on data protection intellectual property (including screen-scraping), commercial contract, and financial services regulatory advice in relation to its creation of an innovative banking software product.

## China Ping An Insurance Overseas

a member of the Ping An Insurance Group, on its USD90.9 million co-investment in a fund sponsored by Vista Equity Partners as part of the CAD2.7bn acquisition of D+H Corp by Misys to create Finastra, one of the world's largest fintech businesses.

## The Bank of Cyprus

on negotiating an agreement with IBM for a digital transformation program aimed to improve their online offering. The agreement consisted of several separate components, including an outsourcing component, software development and a digital factory.

## A global financial services group

on the data protection aspects of a biometry-based mobile authentication system in approximately 30 jurisdictions.

## A Chinese technology and financial services firm

on a number of data protection issues including the implementation of the GDPR, data retention policies and transfer of data to third countries. We advised the client on whether and to what extent its business operations in Europe may be subject to GDPR and how to approach GDPR compliance in the context of a much broader business.

## CLS

the market leading FX service provider, on the launch of two new products: its CLSNet product (a bilateral transaction netting solution) and its related CLSTradeMonitor product (an innovative post-trade monitoring and reporting tool). Our advice covered the entirety of the products' development and launch phases, and include advising on a range of issues relating to the distributed ledger technology platform on which the CLSNet product can operate.

## Deutsche Börse Group

on its investment in Digital Asset Holdings, a venture-stage financial technology company developing blockchain technology to support recording and settling financial transactions.

## Volkswagen Financial Services

on the acquisition of PayByPhone, the mobile cashless parking payments business, from PayPoint for GBP26.5m.

## A provider of multi-bank internet services

on the application of PSD2 and other regulatory requirements.

### Multiple institutional investors

on their participations in the international tranche of Ant Financial Group's c. USD14bn series C fundraising, the largest ever fundraising round by a private company.

### Trussle

on securing its GBP13.6m financing from a consortium of international investors led by Goldman Sachs Principal Strategic Investments and Propel Venture Partners in its Series B funding round.

### Nexi

(previously known as ICBPI) an Italian Bank specialising in payments systems, together with Advent International and Bain Capital, on a transformational project in the European banking and payment processing industry. The transaction consisted of the following components: (a) Equens, the Dutch based provider of payment and card processing solutions, acquired the payment processing business of Atos and Worldline and merged the two activities into a new corporation; (b) Nexi (together with ABN AMRO, ING, Rabo and DZ Bank) became a shareholder of the newly created entity; and (c) Nexi entered into a long-term outsourcing transaction with the newly created entity.

### A global telecommunications services provider

on international laws applicable to mobile payment schemes.

### A Dutch financial institution

on the negotiation of a software and services agreement with Murex, a global software solutions provider for the financial sector, and leading fintech player.

### PayU

(a Naspers entity) on the acquisition of online payments rival, Citrus Pay, the largest all-cash deal India's Fintech sector had seen at that time.

### Allianz Asset Management

on its investment in European Fintech Moneyfarm.

### Multiple institutional investors

on their participations in the international tranche of Ant Financial Group's c. USD14bn series C fundraising, the largest ever fundraising round by a private company. *This deal won Best China Deal from FinanceAsia in 2018.*

### National Bank of Abu Dhabi

on a service agreement with Oxigen Services (India) in relation to mobile banking services to be provided in India by Oxigen for NBAD customers.

### Crédit Mutuel Arkéa

on its acquisition of an 86% stake in Leetchi.com, a France-based Fintech group providing a digital solution to collect money for group gifts and events and an API solution to accept online payments and manage e-money for marketplaces, crowdfunding and collaborative consumption (Mangopay).

### NXMH

on its acquisition of Bitstamp Limited, one of the leading global cryptocurrency exchanges

### Discovery Health

on two Fintech joint ventures concerning the integration of data-based technology platforms into its wellness insurance programmes with Sumitomo Life in Japan and Generali in Europe.

### SPiCE Ventures Capital

on its USD100m initial coin offering.

### Blue Sky Venture Capital

on its participation in a USD 75m Series C funding round into Akulaku, a Southeast Asian e-commerce/FinTech platform with a significant presence in Indonesia which enables customers to shop using credit instalments.

### Annexum Invest

on the establishment of a partnership with Bloqhouse, a fintech start-up focussing on blockchain, and on the joint launch of a (pilot) market place that allows private individuals to enter the secondary real estate investment market. Using blockchain, the platform allows private individuals to make investments as little as EUR100 without the involvement of any intermediaries.

### Telenor, Telenor Financial Services and Telenor Myanmar

on the establishment of a mobile financial services provider in Myanmar by way of a joint venture with a local Myanmar bank.

### Sungard

on the disposal of its fintech business in Malaysia and Singapore to Silverlake Axis (a Singaporean/Malaysian IT business listed on the Singapore stock exchange). The sale also resulted in the transfer of multiple subsidiaries from a number of jurisdictions including Malaysia, Czech Republic, Slovakia, Philippines, Thailand and Pakistan.

### A global financial institution

on a loss of sensitive customer data, including advice on appropriate notifications to the data protection and industry regulators and on an internal investigation.

### Worldpay

a leader in global payments, on a wide range of matters including its 2015 IPO, a reviewing of payment services and related regulatory requirements in some 20+ countries globally and, most recently, its recommended GBP9bn merger with Vantiv.

### GO-JEK

on its acquisitions of three Indonesian fintech companies: 1) PT Multi Adiprakarsa Manunggal (Kartuku) – a leading offline payments processing company in Indonesia; 2) PT Midtrans – a market leading online payment gateway company in Indonesia; and 3) PT Rekan Usaha Mikro Anda (Mapan) – a leading local community-based savings and lending network. These acquisitions were negotiated in parallel and were transformational to GO-JEK's business, as they created a leading fintech company in Indonesia.

### Arbor Realty Trust, Inc.

advising the managers and the issuing vehicles on a series of crowd-funded real estate funds sold on a proprietary platform that conducts online securities offerings in compliance with Rule 506(c) of Regulation D, including advice to the managers of these online crowd-funded vehicles on issues arising under the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Act of 1933 and the Securities Exchange Act of 1934.

### TransferWise

on a range of corporate, commercial and regulatory matters.

### BNP Paribas Fortis

on the development and roll-out of an innovative mobile payments platform in Belgium. The platform, which is a market-first, was developed together with Belgacom and Accenture.

# Our team

## EMEA

---



**Simon Toms**  
Partner – London  
Tel +44 20 3088 4681  
simon.toms@allenoververy.com



**Yannick Arbaut**  
Counsel – Luxembourg  
Tel +352 44 44 5 5744  
yannick.arbaut@allenoververy.com



**Tom Butcher**  
Partner – Abu Dhabi  
Tel +971 2 418 0414  
tom.butcher@allenoververy.com



**Adrianus Schoorl**  
Of Counsel – Dubai  
Tel +971 4 426 7177  
adrianus.schoorl@allenoververy.com



**Jane Finlayson-Brown**  
Partner – London  
Tel +44 20 3088 3384  
jane.finlayson-brown@allenoververy.com



**Rose Hall**  
Head of BD – London  
Tel +44 20 3088 3618  
rose.hall@allenoververy.com



**Herald Jongen**  
Partner – Amsterdam  
Tel +31 20 674 1614  
herald.jongen@allenoververy.com



**Etay Katz**  
Partner – London  
Tel +44 20 3088 3823  
etay.katz@allenoververy.com



**Ben Regnard-Weinrabe**  
Partner – London  
Tel +44 20 3088 3207  
ben.regnard-weinrabe@allenoververy.com



**Jean-Claude Rivalland**  
Partner – Paris  
Tel +33 1 40 06 53 02  
jean-claude.rivalland@allenoververy.com



**Salvador Ruiz Bachs**  
Partner – Madrid  
Tel +34 91 782 99 23  
salvador.ruizbachs@allenoververy.com



**Filip Van Elsen**  
Partner – Antwerp  
Tel +32 3 287 73 27  
filip.vanelsen@allenoververy.com



**Henri Wagner**  
Partner – Luxembourg  
Tel +352 44 44 5 5409  
henri.wagner@allenoververy.com

## Asia Pacific



**Michael Jacobs**

Corporate – Hong Kong  
Tel +852 2974 7238  
michael.jacobs@allenoververy.com



**Will McAuliffe**

Partner – Hong Kong  
Tel +852 2974 7119  
will.mcauliffe@allenoververy.com



**Charlotte Robins**

Partner – Hong Kong  
Tel +852 2974 6986  
charlotte.robins@allenoververy.com



**Jane Jiang**

Partner – Shanghai  
Tel +86 10 6535 4318  
jane.jiang@allenoververy.com

## U.S.



**Jason Denisenko**

Partner – Sydney  
Tel +612 9373 7809  
jason.denisenko@allenoververy.com



**Connell O'Neill**

Partner – Sydney  
Tel +612 9373 7790  
connell.oneill@allenoververy.com



**Justin Cooke**

Partner – New York  
Tel +1 212 610 6351  
justin.cooke@AllenOververy.com



**David Lucking**

Partner – New York  
Tel +1 212 756 1157  
david.lucking@allenoververy.com



**Deborah North**

Partner – New York  
Tel +1 212 610 6408  
deborah.north@allenoververy.com



**Barbara Stettner**

Partner – Washington, D.C.  
Tel +1 202 683 3850  
barbara.stettner@allenoververy.com



**Gregory Mocek**

Partner – Washington, D.C.  
Tel +1 202 683 3887  
gregory.mocek@allenoververy.com



**Anthony Mansfield**

Partner – Washington, D.C.  
Tel +1 202 683 3884  
anthony.mansfield@allenoververy.com

*“A big, standout firm for  
FinTech in general.”*

Chambers Professional Advisers: Fintech 2018

*“A very credible crowd.”*

Chambers Professional Advisers: Fintech 2018

---

## GLOBAL PRESENCE

---

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in 44 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

Abu Dhabi	Bucharest (associated office)	Ho Chi Minh City	Moscow	Seoul
Amsterdam	Budapest	Hong Kong	Munich	Shanghai
Antwerp	Casablanca	Istanbul	New York	Singapore
Bangkok	Doha	Jakarta (associated office)	Paris	Sydney
Barcelona	Dubai	Johannesburg	Perth	Tokyo
Beijing	Düsseldorf	London	Prague	Warsaw
Belfast	Frankfurt	Luxembourg	Riyadh (cooperation office)	Washington, D.C.
Bratislava	Hamburg	Madrid	Rome	Yangon
Brussels	Hanoi	Milan	São Paulo	

**Allen & Overy** means Allen & Overy LLP and/or its affiliated undertakings. The term **partner** is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings.

This document is for general guidance only and does not constitute definitive advice.

© Allen & Overy LLP 2019 | CS1610\_CDD-46226\_ADD-79707