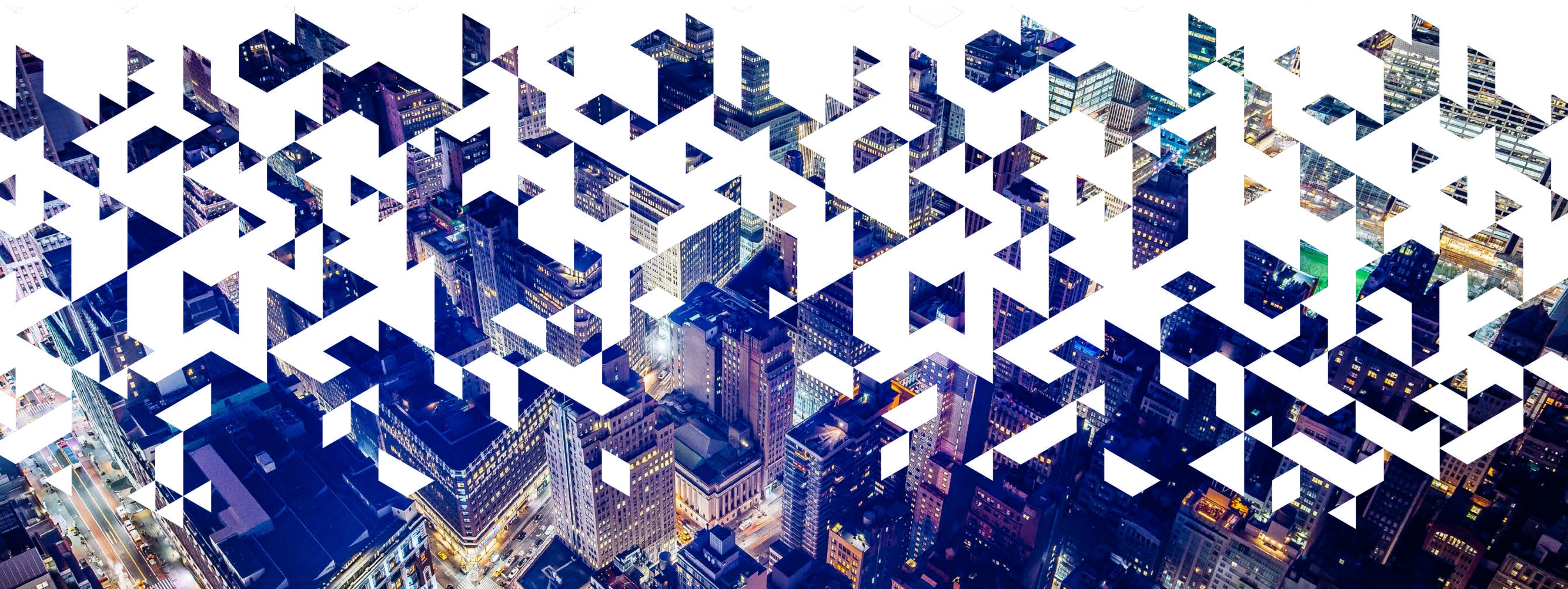


Linklaters

Fintech Global

Year to come 2022 | Year in review 2021



Fintech Global Trends for 2022

01

The digitalisation of finance and the opportunities for fintech

The supercharging effect of the Covid-19 pandemic on the digitalisation of financial markets and products continues – with a resulting power shift from finance providers to consumers. The crisis has provided an extreme stress test for the finance industry which – enabled by tech – has passed with flying colours. Going into 2022 the biggest theme in finance is “the great unbundling of financial services”, and its rebundling around a digital architecture, putting fintech at the heart of the industry. Fuelled by COP26, the prioritisation of sustainability and transition to net zero is also providing big opportunities for “climate fintech” and data/financial solutions to the climate change challenge.

02

Record levels of fintech investment and funding

The digital shift has also precipitated record levels of investment – including venture capital – into digital assets, payments and fintech generally. By the end of Q3 2021, global fintech funding reached US \$94.7billion, almost double the 2020 year total. We expect that to continue to accelerate into 2022 and to drive more transformational deals in the fintech space, as well as exits for those investors. That said, it remains to be seen if the heat in the market can be sustained as regulatory efforts, such as the suppression of so-called “killer acquisitions” in tech, antitrust attention on control of data, and new/ enhanced foreign investment regimes focused on investments in tech, start to bite.

03

The global regulatory reset – financial services, antitrust and data

China has implemented a major regulatory reset across financial services, antitrust and data – focusing on some Big Tech business models and crypto. The China regulatory squeeze is impacting domestic investment but also creating opportunities in India and South East Asia. The US is also experiencing a reset – regulating by enforcement, with more anti-tech Biden regulatory appointees and changing tides of sentiment against US tech giants. The EU and the UK post Brexit are keen to catch up with their larger rivals: focusing on fostering safe and trustworthy innovation, building on their established frameworks and putting out bold new proposals with more to come in 2022.

04

Blurring lines between crypto and mainstream financial markets

The range and complexity of digital assets continues to expand, with the rapid growth of DeFi and NFT markets and broadening development of digital assets pegged to traditional assets. Institutional exposure to digital assets as a distinct asset class is expected to increase significantly while deployment of novel technologies in the traditional financial markets gains momentum. The crossover between decentralised and traditional markets and related contagion risks will be of particular concern for policymakers. A key challenge is to determine how policies should evolve to address both novel market activity and traditional market activity deploying novel technology in a manner that fosters innovation whilst managing risks effectively.

05

Payments and the future of money

Innovation has enabled the payments industry to benefit from commerce moving online. Products, such as buy-now, pay-later, have boomed. As local payments become frictionless, calls will grow louder for infrastructure and regulations to harmonise so that cross-border payments become cheaper, quicker and easier. But it is not only existing infrastructure which is being improved; wholly new ways of making payments are also under development. The global supply of stablecoins is already over \$100bn. Central banks are continuing to explore what it means to issue digital currencies, although many CBDCs are still years from being in widespread use. In the meantime, payments firms can expect regulation and competition to put pressure on business models and increase the potential for disputes.

06

Data governance, AI and cyber – an increasingly complex matrix

Regulators in major markets are adopting divergent approaches to incentivising effective risk management. The EU’s first-mover proposals for an AI specific regulation benchmark a comprehensive, risk-based approach, while the UK is considering deviations from EU standards for both data protection and AI to foster innovation. China has responded to the EU’s GDPR with a similar, but sometimes more stringent, data protection regime, and has its own proposals on global standards for AI. Data protection and cyber rules are proliferating in the US, as is increasing enforcement against digital platforms. Several markets are also following the UK and EU’s lead with wide-ranging operational resilience requirements. This broad, unharmonised matrix of requirements is placing pressure on the increasingly complex interaction between the technology, risk, compliance and procurement functions in international financial institutions.

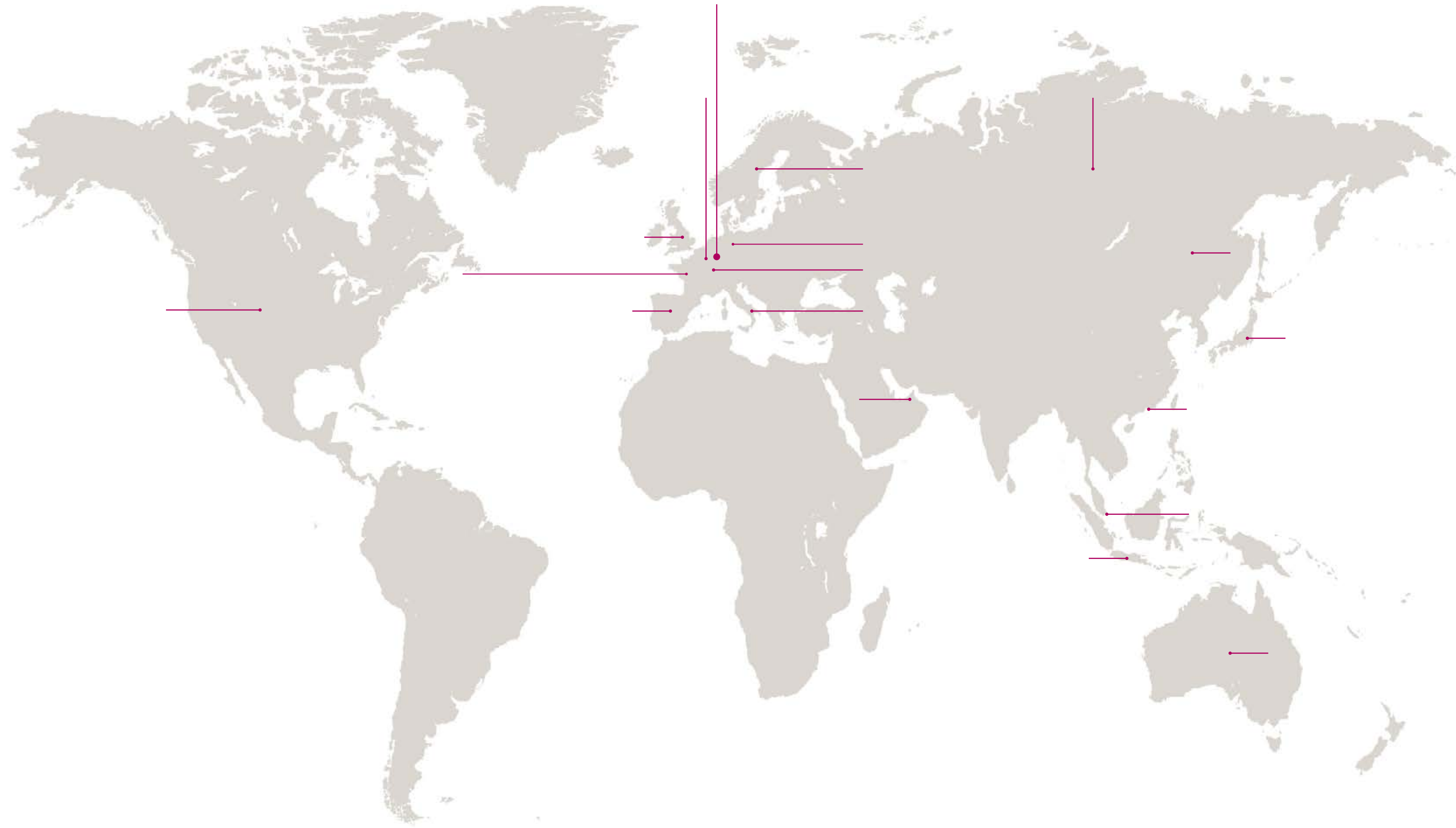
07

Innovation leading to increasing enforcement and litigation risk

Novel financial products and services do not always fit easily into legal frameworks and may pose greater inherent risks (such as volatility, vulnerability to market manipulation and data breach, scams/financial crime). The increase in their uptake has focused regulators even further on mitigating consumer harm. Where provided by start-ups/ scale-ups with relatively immature compliance frameworks, there is a recipe for future investigations and litigation. Regulators’ expectations are also increasing around preventing financial crime, transparency, fair processing of personal data, acting in consumers’ interests and responsibly on ESG and D&I. The risk of civil claims – including class actions – is also increasing due to the availability of litigation funding in many jurisdictions.

For more on broader tech trends see our [Tech Legal Outlook 2022](#)

Global Fintech





European Union

2022

Digital Finance Package

The Commission will continue to progress its Digital Finance Strategy and Retail Finance Strategy, both of which were launched in 2020. Several elements called for advice on implementation from the European Supervisory Authorities (ESAs) and they are due to publish their advice early next year. Recommendations are expected to include proposals for amendments to existing regulatory frameworks (for example, to regulate Big Techs more holistically) as well broader changes in approach (for example, to upskill national authorities in relation to recent developments such as the “platformisation of financial services”), among other things.

Negotiation of MiCAR and DORA and adoption of DLT pilot

Trilogue negotiations between the Commission, the European Parliament and the Council are expected to begin on the legislative text of the Markets in Cryptoassets Regulation (MiCAR) and Digital Operational Resilience Act (DORA), originally proposed by the Commission as part of its Digital Finance Strategy. Meanwhile, the legislative framework for a pilot regime to test market infrastructures based on distributed ledger technologies (DLT) is expected to be formally adopted.

New regulation for artificial intelligence

The EU will press ahead with its proposal to create a new regulatory superstructure for AI, including prohibiting some uses entirely and imposing significant and extensive compliance obligations on providers of “high risk” AI – which, as currently drafted, will impact various use cases in financial services. Strong lobbying from industry concerned about the breadth of the definition of AI and the compliance burden could impact the scope of the final act.

[Read more](#)

Heightened cyber risk and regulation

The number of cyber attacks is on the rise and the ensuing disruption and the cost of dealing with cyber crises is growing substantially. Proposals have been tabled to expand the scope of existing EU cybersecurity legislation (NIS 2 Directive). This could mean increased security requirements, more prescriptions for incident reporting as well as more stringent supervisory measures from supervisory authorities and stricter enforcement requirements. The EU’s proposed Digital Operational Resilience Act extends regulation not only to financial entities but also critical third party tech providers.

[Read more](#)

Intervention in competition in digital markets

There is increasing anti-trust scrutiny of digital markets in the EU and individual EU member states. New market regulations such as the EU’s Digital Markets Act are being introduced to ensure well-functioning digital markets, with radical new tools and regulation of digital platforms, primarily aimed at controlling digital “gatekeepers” and “ecosystems”. By overturning how digital gatekeepers can operate their eco-systems, deal with businesses active on their platforms and provide access to key inputs and IP rights, these rules could impact all companies doing business in Europe’s digital economy. [Read more](#)

Merger control and foreign investment impacting investment strategies in Europe

Investors will need to give consideration to foreign investment and merger controls impacting tech investments. In relation to merger control, tech and dynamic markets are clearly a focus for regulators and a hotspot for enforcement and policy review.

The EU Foreign Direct Investment Regulation and a number of similar regimes at member state level have introduced tighter foreign investment controls including new rules aiming to protect the tech sector, and governments are using their tools to intervene more aggressively than ever before.

Regulation of ePrivacy and digital services

The EU’s proposed ePrivacy Regulation is intended to replace the ePrivacy Directive which was adopted in 2002 and later enhanced and extended. It contains additional rules to align to the GDPR and addresses the use of cookies; email and phone direct marketing; the use of electronic communications content and metadata, etc ([read more](#)). The EU’s proposed Digital Services Act, if adopted as it stands, will set out rules on the liability of intermediaries for the content, products/services and advertisements they distribute ([read more](#)).

Increasing data regulatory enforcement and litigation risk

With strict data protection legislation in force and data protection enforcement on the rise across Europe, use of personal data is the subject of increased scrutiny by data protection authorities ([read more](#)). One area of regulatory focus is the international transfer of personal data from the EU to countries with strong state surveillance capabilities ([read more](#)). In the EU and the claimant friendly developments could enable individuals to pursue collective actions for alleged privacy breaches more easily, creating an even tougher privacy regime and heightened litigation risk and costs. [Read more](#)



European Union

2021

Commission unveils new AML package

The Commission presented a package of legislative proposals to boost the EU's anti-money laundering and counter terrorist financing regime. Among the proposals, e-money institutions, payment service providers and cryptoasset service providers may be required to appoint contact points in the EU Member States where they operate in order to facilitate local AML supervision. Other reforms would extend AML requirements to all cryptoasset service providers, apply the Financial Action Task Force (FATF) travel rule to cryptoassets, and ban anonymous cryptoasset wallets. [Read more](#)

Ongoing work to support DLT in financial markets

Political agreement was reached on the legislative text for a pilot regime to test market infrastructures based on DLT. Meanwhile, the European Securities and Markets Authority (ESMA) indicated that central securities depositories should be able to use DLT to create digital security market infrastructure outside of the pilot regime, subject to a few regulatory clarifications and specific targeted amendments which it has recommended to the Commission. The Commission also consulted on the technology-neutral aspects of the Settlement Finality Directive and Financial Collateral Directive.

Supervisory focus on payment for order flow practices

ESMA highlighted that the practice of zero-commission brokers receiving payments from third parties in return for directing client order flow to them is unlikely to be compatible with their obligations under MiFID II. It warned firms to assess thoroughly their ability to comply with regulatory requirements, including in relation to best execution, conflicts of interest, inducements and cost transparency and asked national authorities to prioritise the matter in their supervision.

Launch of digital euro project

The European Central Bank launched a “digital euro” project. The investigation phase of the project, which aims to address key issues regarding design and distribution, is expected to last 24 months. No decision to issue a digital euro has yet been taken, but the ECB is preparing itself to issue one should the need arise.

New ECB oversight framework for PISA

The ECB published a new oversight framework for electronic payment instruments, schemes and arrangements (PISA) following a consultation. The new framework will be used to oversee companies enabling the use of payment cards, credit transfers, direct debits, e-money transfers and digital payment tokens, including electronic wallets. Companies already subject to Eurosystem oversight are expected to adhere by 15 November 2022 while other companies will have a grace period.

Crowdfunding Regulation entered into force

The Crowdfunding Regulation entered into force in November and, at the same time, ESMA published a final report outlining the relevant technical standards.

Progress on compliance with strong customer authentication requirements

The European Banking Authority reported significant progress across the EU on compliance with strong customer authentication (SCA) requirements under the Payment Services Directive (PSD2). It also consulted on clarifying one of the exemptions to SCA in order to harmonise applications across the EU and support the account information service business model.

Review of PSD2

The Commission is expected to launch its review of PSD2 later this year. As part of this, it is expected to consider the impact of strong customer authentication, the current limits on contactless payments, whether other technical activities ought to be brought within scope, the scope of exemptions, the need for changes in prudential, operational and consumer protection requirements, alignment with the E-money Directive and measures to improve processes in respect of cross-border payments in or out of the EU.

European Union

2021 Continued

Development of instant payments architecture

In pursuit of its ambition to promote homegrown pan-European instant payment solutions, the Commission held a number of consultations on instant payments. Among other things, it has sought to identify potential obstacles, particularly to achieving broad participation in the SCT Inst Scheme, which it sees as a precondition to the successful development of pan-European instant payment solutions. Some respondents queried whether a digital euro, if launched, might undermine any efforts in this area.

New contracts and strict guidance for international data transfers

The EU Commission issued new Standard Contractual Clauses for international personal data transfers and the European Data Protection Board issued strict new guidance on when these transfers can take place.

[Read more](#)





Australia

2022

Regulation of Cryptocurrencies and digital assets – AML/CFT and tax

The Government will consider further measures to enhance the regulation of cryptocurrencies and digital assets.

This was reinforced in the [Final Report](#) released by the Senate Select Committee on Australia as a Technology and Financial Centre in 2021 which included several recommendations relating to the regulation of the Australian digital assets and cryptocurrency sector, including: a review of the AML/CTF regulations; undertaking a token mapping exercise to classify the various types of cryptoasset tokens and other digital assets; further clarification around taxation rules for digital assets; as well as a tax concession for digital asset miners operating in Australia who source their own renewable energy. [Read more](#)

'De-banking' of Australian fintechs and other companies

The Government has flagged that a more proactive approach needs to be taken in order to respond to concerns relating to de-banking across the fintech sector. In its [Final Report](#) released in October 2021, the Senate Select Committee made three recommendations relating to the issue, including the establishment of a formal appeals process involving the Australian Financial Complaints Authority and the development of common access requirements for the New Payments Platform.

The Report also recommended that that the Government finalise the due diligence scheme described by the ACCC in its 2019 inquiry, under which Fintechs could address the due diligence requirements of the banks and providers of payment system infrastructure, and enact this scheme by no later than June 2022.

Cybersecurity and operational resilience a key priority

Cybersecurity and operational resilience continue to be key priority areas for regulators in the financial services space. In its [2021 Assessment of the Reserve Bank Information Transfer System](#) against the relevant international standards, the RBA highlighted that it has plans to explore enhancements its physical infrastructure in order to ensure resilience in the face of evolving cybersecurity threats.

The Government has also passed a Bill which enacts the key elements of its security of critical infrastructure reforms such as a mandatory cyber incident reporting regime for critical infrastructure assets and introduce 'last resort' powers for the government. A second Bill on the other proposed amendments is expected following industry consultation next year. [Read more](#)

Investigating the case for an Australian Central Bank Digital Currencies

The RBA will continue to [investigate the case for a central bank digital currency](#) and explore the technical, operation and policy implications of issuance. This will involve engaging with a wide range of stakeholders and participating in collaborative projects. The Bank will also undertake work to understand other technology-driven changes to payment systems and financial market infrastructure, including the implications for competition, efficiency and financial stability.

Proposed changes to the ePayments Code

ASIC has released its [Consultation Paper 341](#) which aims to ensure continued effectiveness and relevance of the ePayments Code. The proposed changes relate to compliance monitoring and data reporting, mistaken internet payments, unauthorised transactions and small business protections.

Merger control reforms

The ACCC is advocating for the overhaul of Australia's merger regime, including the adoption of a mandatory and suspensory merger regime with specific rules for merger parties with existing market power, such as large digital platforms. This follows the ACCC's previously expressed concerns that existing merger laws are inadequate to prevent major banks from buying emerging fintechs. We can expect extensive industry consultation and debate on the proposed reforms in the year ahead. [Read more here](#) and [here](#)

Australia

2022 Continued

Deterring ransomware attacks

In response to the escalating threat of ransomware and cyber extortion incidents, the Australian Government released its [Ransomware Action Plan](#) which sets out the upcoming policy, and operational and legislative reforms aimed at deterring ransomware incidents. Some of the key proposals include introducing mandatory notification requirements and new standalone aggravated offences for all forms of cyber extortion and for cyber criminals seeking to target critical infrastructure.

Following the Counter Ransomware Initiative summit attended by 30 countries (including Australia), we are likely to see greater international cooperation and information sharing to address the transnational threat of ransomware activity. [Read more](#)

Proposals for significant privacy reform

We can expect to see privacy law reform take shape in the year ahead, after the Federal Government opened [consultation](#) on its discussion paper which sets out its proposals for major reforms to the Privacy Act 1988 (Cth).

In parallel, the Government also released for consultation a draft Online Privacy Bill which introduces a binding privacy code to address the privacy challenges posed by social media, data brokerage service providers and large online platforms with over 2.5 million end users in Australia.

These proposed changes, if adopted, will result in significant reform to the existing Australian privacy framework, with wide-reaching implications to all organisations subject to the Privacy Act.

Read more [here](#) and [here](#).





Australia

2021

Strategic direction for payments ecosystem

The Treasury Review of the Australian Payments System produced its [Final Report](#), finding that there needs to be a clear strategic direction for the payments ecosystem and a simplification of the regulatory landscape to encourage innovation and support the uptake of new payment services by consumers and businesses.

The review makes several recommendations, including greater coordination between the payments regulators, expanding the scope of the Reserve Bank of Australia and the Treasurer's powers, and developing a single, tiered payments licensing framework. [Read more](#)

Payments and Digital Wallet inquiry

The Parliamentary Committee on Corporations and Financial Services commenced its consultation on the [payments and digital wallet inquiry](#). The Committee will be examining a range of issues relating to the difference in bargaining power between operators, merchants and consumers. This inquiry is intended to provide the Committee with an opportunity to understand the way mobile payments and digital wallets are emerging as major players in Australia's e-commerce ecosystem.

Buy Now, Pay Later codes of conduct

The Australian Financial Industry Association's [code of practice](#) for the BNPL sector came into effect. The BNPL industry also drew up a self-regulated [code of conduct](#) that aims to create minimum standards across the sector and will be enforced independently.

The RBA released a [consultation paper](#) identifying that the benefits of the BNPL sector currently outweigh the need for regulation, but has since noted that there may be a public interest case for BNPL providers to remove their

no-surcharge rules, and has indicated that it will engage with Treasury on regulatory approaches.

ASIC has also [indicated](#) that it will prioritise examining the BNPL sector for conformity to the new design and distribution obligations coming out in late 2021.

Mandatory credit reporting scheme

The mandatory comprehensive credit reporting scheme came into effect, buttressing the existing voluntary regime and including additional consumer protections. Under the regime, eligible licensees must report mandatory credit information to credit reporting bodies, and ASIC may seek civil penalties in response to any breaches. [Read more](#)

Increased collaboration between Big Techs, banks and Fintechs

There was increased collaboration between Big Techs, banks and Fintechs in 2021, with Apple, PayPal, Commonwealth Bank and Citi Australia all separately announcing their expansion into the Australian BNPL space. Fintech and Big Tech businesses also continued to drive payments innovation through the introduction of in-app payments and digital wallets, with Apple working on incorporating a BNPL service into Apple Pay purchases.

Antitrust regulation of the digital economy

The ACCC undertook an investigation and several merger reviews in the payments and fintech sectors, including its investigation into Visa's alleged anticompetitive conduct. The ACCC investigated allegations that Visa offered large merchants cheaper interchange rates for processing credit card payments if the merchants agreed to process Visa-branded dual network debit cards through the Visa network alone.

Strengthening the regulatory environment for Fintechs

The Senate Select Committee on Australia as a Technology and Financial Centre released its [Final Report](#), aimed at strengthening the regulatory environment for Fintechs and innovative business in Australia. The Report makes twelve key recommendations, including the replacement of the Offshore Banking Unit regime in order to enhance Australia's global position.

Continued rollout of the Consumer Data Right regime

The Australian Government continued to expand the scope of the CDR regime on a sector by sector basis to enable further sharing of consumer data, including by simplifying data sharing of joint account holders. Following the CDR rollout to the entire banking sector in 2020, implementation in the energy and in the telecommunications sector will follow.

The Commonwealth Bank of Australia was the first 'big four' data recipient under CDR. CBA currently invests in the late bill payment start-up [Payable](#), which has been described as an example of an open-banking use case.



Belgium

2022

Belgian start-ups and scale-ups: fintech's new age

The Belgian fintech landscape continues to evolve and mature. In the early years of fintech, and of blockchain technology in particular, many Belgian start-ups were launched with a rather broad business idea; while traditional players initially looked at fintech companies with a certain degree of prudence.

It now becomes apparent that more and more young companies move away from the general approach and instead create room for a more targeted investment strategy into fintech ventures, like Venly, a specialist blockchain company focusing on the trading of non-fungible tokens (NFTs) or Mozzeno, a crowdlending platform supporting peer-to-peer retail loans.

Collaboration and strategic partnerships

Belgian incumbents and providers of critical market infrastructure are also increasingly embracing fintech initiatives through collaborations with start-ups and scale-ups and by exploring possibilities to reconcile a densely regulated environment with the benefits of distributed ledger technology (DLT) and other innovations.

Even established companies without a traditional focus on financial services are drawn into the fintech sphere through strategic partnerships – a recent Belgian example is the collaboration between Proximus, a telecoms provider, and Belfius, a bank and insurance company, who together launched a digital app for sustainable banking and a tailor-made offer combining banking and telecom services.

A new Belgian Omnibus Law opens the door for securities on DLT

A legal framework for the use of new technologies (and, in particular, DLT) for the holding and settlement of dematerialised securities (see Belgium 2021) is likely to gain more significance in 2022 and beyond.

The Belgian legislator is not, at this stage, creating a new type of securities under Belgian law (which would come in addition to registered securities and immobilised or dematerialised securities). The existing legal regime is instead adapted to facilitate the emergence of new post-trading models, but the law contains no further detail on the precise nature of the technology. The intention of the Belgian legislator is to ensure that Belgian law is technology neutral and future proof, yet in practice, it can be expected that only private, permissioned DLT-based solutions are envisaged.

Conversations between market players intending to spearhead reliance on the new regulatory framework and regulators will cast further light on the objectives and technological scope of the law, and the adoption of further implementing acts (e.g. by Royal Decree) will likely refine the Belgian framework going forward.

A new age of Ponzi schemes in crypto

Since the beginning of the Covid-19 pandemic, the Belgian Financial Services and Markets Authority (FSMA) has noticed a sharp increase in the number of companies that commercialise trading and training software intended for trading in non-mainstream products like cryptocurrencies.

The software is often marketed through a pyramid scheme (multilevel marketing or MLM model) that encourages participants to bring in new members (through various monetary rewards).

These MLM networks are mostly commercialised on social media and focus strongly on young people by promoting a life of luxury that is (supposedly) made possible by participation in the network.

The regulatory response to the risks around crypto trading

The Belgian FSMA will continue to monitor risks around the commercialisation of crypto. The Authority points out that the investments which are accessible via trading software (such as alternative investments in precious metals or virtual currencies) are generally not subject to any supervision, and that some of these products may generally not be marketed to retail investors in Belgium.

Additionally, to try to reduce the risk associated with such practices, the Belgian FSMA intends to improve prevention by regularly publishing warnings and by requesting the judicial authorities to promptly block access to websites involved in illegitimate business.

Financial service providers are focusing on resilience against cyberthreats

The ever-evolving fintech landscape does not only provide a breeding ground for innovative solutions and capabilities, unfortunately it also results in the emergence of new threats, like cyberattacks and information theft. Individuals, companies and notably governments must therefore bolster their cyber-defence capabilities in order to stay ahead of hackers.



Belgium

2021

A new Belgian Omnibus Law opens the door for securities on DLT

A much-welcomed Belgian novelty of 2021 was the introduction of a legal framework for the use of new technologies (and, in particular, distributed ledger technology or DLT) for the holding and settlement of dematerialised securities.

More specifically, the law has amended the “fungibility” Royal Decree no. 62, the Code of Companies and Associations, the settlement finality law and other pieces of Belgian legislation, in order to allow central securities depositories and account holders to keep their securities accounts in or through “secured mechanisms for electronic registration”.

Cybersecurity in finance

Following the “Threat Intelligence-Based Ethical Red teaming” (TIBER-EU) framework laid out by the European Union, the National Bank of Belgium (NBB) implemented its own TIBER-BE initiative to strengthen the protection of core financial institutions and critical market infrastructure providers located in Belgium – these organisations often rely on crucial financial technology which has been operational for many decades before the word “fintech” became fashionable.

The NBB’s programme marks a move away from a focus on defensive security only, towards a combination of both defensive and offensive capabilities through the testing of applications, systems and infrastructure from an attacker’s point of view.

Operational resilience

In light of the regulatory advances around the Digital Operational Resilience Act (DORA), we expect the NBB and Belgian stakeholders to continue investing in cyber resilience and to safeguard critical financial technologies and infrastructure.





France

2022

The supervisory approach towards innovative players

The French prudential regulator (ACPR) and the French central bank have confirmed their willingness to support innovative players in the transformation of the financial ecosystem, confirming a new supervisory approach that would balance innovation, technological neutrality and stability of the financial system going into 2022.

[Read more \(in French\)](#)

ACPR reflections around explainable artificial intelligence (xAI)

The ACPR's Fintech-Innovation Hub, in partnership with key actors in the financial sector, has organised a workshop to shed light on the regulatory issues raised by AI in terms of risk management, governance and customer protection.

This takes a use case approach, to explaining the methods and the levels of "explainability" that it is possible to provide when using AI tools, depending on whether that explanation is required for clients, business experts or auditors([read more](#)). The ACPR is also launching a series of conferences on explainable artificial intelligence (xAI).

[Read more \(in French\)](#)

Increased importance of cybersecurity for Fintech

The AMF and the ACPR have jointly announced they will increase focus on cybersecurity of the fintech firms subject to their supervision. The AMF stated that cybersecurity will become a major focus of attention for standard regulatory audits. The AMF also indicated that a process dedicated to the collection of information on cybersecurity incidents and their handling by actors of the financial sector is being implemented. [Read more \(in French\)](#)

Accelerating the transition to sustainable finance

The French financial markets regulator (AMF) intends to support the financial actors in implementing the regulatory framework and in mastering the integration of sustainable finance and climate issues. This will also consist in helping issuers to improve the quality of non-financial information and facilitating innovative approaches to sustainable finance. [Read more](#)

The commitment of the French central bank and French regulators on climate change

The French central bank is conducting studies to build up a framework and methodology to analyse the risks associated with biodiversity loss, trying to estimate the financial system's dependencies on ecosystem services and its biodiversity footprint. The AMF and the ACPR regularly publish reports on the monitoring and evaluation of the climate commitments of market players.

[Read more \(in French\)](#)

The French Data Protection Authority's focus on the data protection aspects of digital payments

The French Data Protection Authority (CNIL) has issued a white book on the protection of personal data within the context of payments, with a particular focus on digital payments.

This addresses the many issues arising with respect to the protection of personal data from the increased adoption of digital payments, and addresses the challenges that will arise with respect to future payment methods such as central bank digital currencies or and increasing use of mobile payments.

The CNIL also analyses the importance of the global flow of payment data and the ongoing debate on the localisation of payment data in Europe which are key issues for the protection of personal data in the Fintech industry. [Read more \(in French\)](#)





France

2021

Testing central bank digital currency solutions for interbank settlement

France's central bank invited eligible European institutions to apply to test wholesale central bank digital currency solutions for interbank settlement.

This came as the Bank of England sought views on a retail CBDC model (See UK 2021). Selected applicants have the opportunity to design and create experiments with the benefit of key resources from the Banque. The results will feed into discussions at a Eurosystem level on the viability of a euro CBDC. [Read more](#)

A deadline for strong customer authentication on online payments

The French Observatory for the Security of Means of Payments designed a migration plan towards strong customer authentication solutions, seeking to identify the adaptations needed to be made by institutions within the French market. It granted a grace period for the implementation of strong customer authentication which was required by March 2021. [Read more](#)

Reflections around the implementation of the travel rule on KYC

A joint working group between the French banking/ financial regulators and market players highlighted practices and perspectives around the application of the AML-CFT rules to the cryptoassets sector.

This group outlined that the application of the so-called "travel rule" (requiring financial institutions participating in a transaction to exchange KYC information) to asset transfers remains a major challenge and called for the implementation of technical tools at a transnational level. [Read more \(in French\)](#)





Germany

2022

Regulation of security tokens at EU and national law level

Following the implementation of German Electronic Securities Act in 2021 (see Germany 2021), it will be interesting to see how the German eWpG interacts with proposals from the EU regarding the application of financial regulation to security tokens. Also, we are expecting to see first issuances of electronic securities under the new Act. [Read more \(in English\)](#) | [Read more \(in German\)](#) | see our [German language reading version](#)

Issuance of crypto fund units

A [draft Ordinance on Crypto Fund Units](#) (KryptoFAV) is under consultation. This will allow investment funds to issue electronic securities in the form of crypto fund units listed in a crypto securities register. The focus is on promoting Germany as a fund location by making German legislation attractive and appropriate to current developments.

The draft Ordinance also regulates which provisions of the German Electronic Securities Act are applicable to electronic crypto fund units. It stipulates that the depositary also has to be the register-keeping entity due to the special features of its legal status. The ordinance is to enter into force immediately after its adoption and will be evaluated as soon as sufficient experience is available, at the latest after five years.

Stricter regulation for crypto currencies

The German government and tax authorities have been trying for a while to integrate cyber currencies into existing regulations in order to combat the use of crypto currencies in criminal activities – focusing on complete traceability of the parties involved in the transfer of cryptoassets.

A [draft Ordinance on Individual Questions Regarding the Income Tax Treatment of Virtual Currencies and Tokens](#) issued by the BMF shows that it is attempting to tax (almost) any kind of activity in the field of crypto currencies as well as the income or profits generated from it. In this respect, the opinion of the BMF should be particularly relevant for persons who not only engage in classic trading (buying/selling), but also, for example, in mining (block creation).

Requirements for electronic securities registers

The BMF and the BMJV are consulting on a [draft Ordinance on Requirements for Electronic Securities Registers](#) (eWpRV) which is expected to come into force in 2022 and is intended to formalise the basic requirements for the maintenance of electronic securities registers provided for by the German Electronic Securities Act in 2021 (eWpG).

The eWpRV is intended to increase legal certainty for market participants, in particular potential register-keeping entities, and at the same time ensure sufficient investor protection.

An evaluation will take place no later than five years after the eWpRV comes into force in order to take account of any market dynamics. See our [German language reading version](#) of the draft Ordinance that compares the text of the new ordinance and the related explanatory memorandum.

Growing M&A activities

We have seen a continuous up pick in valuation, strong fintech growth and increasing fintech M&A activities in 2021. We expect that M&A activities will continue to rise in 2022, a trend that looks like it will be driven by the bigger Fintechs.

Germany taking the lead in GAFA “gatekeeper” proceedings

The Federal Cartel Office (FCO) has initiated proceedings against all big tech companies to assess whether they have a “paramount significance for competition across markets”. Proceedings are based on the newly introduced Section 19a of the German Competition Act which aims at regulating market players that combine a variety of tools, systems and platforms. Companies deemed to be of paramount significance are subject to a special behavioural control, including the prohibition of self-preferencing or exclusionary conduct.

The categorisation applies for five years but can be challenged by the affected company at the German Federal Court of Justice. The outcome of the current proceedings is still pending. It may also impact the shape of the EU Digital Markets Act. [Read more](#)



Germany

2021

The fintech market in 2021

The fintech industry in Germany continued to grow in Germany – not least due to the Covid-19 acceleration of digitalisation. Accordingly, further substantial investments in this sector were made in 2021 – with an increasingly international investor base. Investors remained active and did not shy away from larger funding rounds while at the same time being more careful where to invest. For example, the latest funding round of N26 raised EUR 700m.

Apart from equity investments, we saw a further increase in debt financing for fintechs, in particular, in the asset-based financing space where the fintech's assets (e.g. customer receivables but also tangible assets such as vehicles, e-scooters and e-bikes) are used to secure more favourable financing terms.

German Electronic Securities Act – revolution or evolution?

A new [German Electronic Securities Act](#) (eWpG) came into force allowing the issuance of securities in an electronic format, abolishing the need for paper-based securities. The introduction of the eWpG brings Germany in line with other jurisdictions which have been allowing dematerialised securities for years (e.g. Norway, France, the UK and Switzerland). The new law not only permits the dematerialisation of securities, but also the use of the distributed ledger technology. Whilst being technology-neutral, the eWpG is likely to encourage crypto securities issuances in Germany as well as faster, cheaper and more frequent issuances.

Verification of crypto payment flows

A new [Ordinance on Crypto Value Transfer](#) (KryptoWTransferV) came into force providing for verification of payment flows through crypto token transfers in the same way as for money transfers. Under the KryptoWTransferV, a crypto value service provider transferring crypto values on behalf of an order taker is required to transmit details of the name, address and account number (e.g. the public key) of the originator, and the name and account number (e.g. the public key) of the beneficiary simultaneously and securely to the crypto value service provider acting on behalf of the beneficiary.

Cybersecurity in payment and e-money institutions (ZAIT)

The German Federal Financial Supervisory Authority (BaFin) published a new [Circular Regarding Supervisory Requirements for IT in Payment and E-Money Institutions \(ZAIT\)](#), specifying the requirements for proper business management relating to the use of information technology and cybersecurity. Previously, payment and e-money institutions were subject to the Supervisory Requirements for IT in Financial Institutions (BAIT) in connection with the Minimum Requirements for Risk Management for Banks (MaRisk), which the new ZAIT are now strongly aligned with.

The ZAIT specify the European Banking Authority (EBA) guidelines for the management of information and communications technology (ICT) and security risks as well as for outsourcing. Making information risk and information security management a part of risk management is intended to combat the growing threat of cyber attacks.

Institutions should thus be able to avoid security gaps, detect security incidents promptly and ensure regular

business processes. Further specifications include the supervisory requirements for business continuity management and the outsourcing of IT processes.

Lex Wirecard & tightening of outsourcing regime

German outsourcing regulation was amended in response to increasing digitalisation. First, as a reaction to open criticism by supervisory authorities that complex outsourcing arrangements have impaired the supervision of the Wirecard Bank AG, the “Lex Wirecard”, a [Law to Strengthen the Integrity of the Financial Markets](#), was adopted.

Second, an update to the German outsourcing requirements (in BaFin's [MaRisk](#)) was published to implement the EBA Outsourcing Guidelines into German law.

Together, these initiatives significantly tighten the German outsourcing regime, requiring, e.g., the notification of outsourcing arrangements to the BaFin as well as (in certain circumstances) direct supervision over the service providers.



Hong Kong SAR

2022

Fintech 2025 strategy

Banks should be going “all-in” with comprehensive fintech adoption in the next four years according to the Hong Kong Monetary Authority’s “Fintech 2025” strategy, which sets out five main areas of focus. A major part of the strategy is the “All banks to go fintech” element which encourages banks to fully digitalise their operations, from front-end to back-end for 2025.

“Next generation data infrastructure” is another part of the plan, with the HKMA continuing to work on the Commercial Data Interchange, digital corporate identity, and a DLT-based credit data sharing platform. Further work on CBDCs also features in the plan (more on this below), alongside a recognition from the HKMA that funding and policies to support innovation is a necessary limb to the strategy, and expanding the fintech-savvy workforce.

CBDC research & development in Hong Kong

Over the course of 2020, the HKMA was involved in projects looking at both retail and wholesale CBDC. At the end of 2020, the HKMA published a technical whitepaper on retail CBDC, assessing the possibility of issuing retail CBDC in Hong Kong.

The publication of the whitepaper is part of the HKMA’s research effort on the technical front and it explores potential technical design options for issuing and distributing retail CBDCs. The HKMA aims to come up with an initial view on issuing retail CBDC in Hong Kong by the middle of 2022.

CBDCs in cross-border payments

The HKMA will also continue to collaborate with the People’s Bank of China in supporting the technical testing of e-CNY in Hong Kong for cross-boundary payments for both domestic and mainland residents.

Regulating virtual assets

Julia Leung, deputy CEO of the Securities and Futures Commission announced in a speech in early November 2021 that the SFC is currently reviewing the regulatory regime for virtual assets introduced by the SFC three years ago to see if it is still fit for purpose, and whether any modifications are required. We therefore expect that a circular issued jointly with the HKMA will be issued with the review results in 2022.

Licensing for virtual asset exchanges

The regime for regulating virtual asset exchanges will undergo further changes in 2022/2023, after the Financial Services and Treasury Bureau’s published a conclusion paper looking at this and other matters under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO). [Read more](#)

The conclusion paper confirmed that the proposed new virtual assets regime will mean an exchange trading any type of virtual asset will require a licence from the SFC to operate in Hong Kong. It will be a criminal offence to carry on the regulated activity of operating a virtual asset exchange without obtaining a licence from the SFC.

The changes will need to be made by way of an amendment bill for AMLO, and the FSTB is aiming to introduce the bill into the Legislative Council in the 2021-22 legislative session, with further consultation on the regime expected from the SFC later in 2022. The regime is expected to commence in 2023.





Hong Kong SAR

2021

HKMA tech baseline assessment

As part of the “all banks go fintech” approach in the Fintech 2025 strategy, all licensed banks with significant operations in Hong Kong received a request from the

HKMA to complete a tech baseline assessment. The assessment required information on the bank’s current fintech usage and future plans for fintech implementation over the next three years.

With the information it receives, the HKMA is identifying whether there are particular types of fintech or technologies which are under-used and which may need further support from the HKMA. This is an example of the collaborative approach which the HKMA has taken with the banking industry in order to accelerate the take-up rate for tech solutions in finance.

CBDC Bridge project

On the wholesale front, the HKMA’s previous project exploring the use of CBDCs in cross-border payments with the Bank of Thailand was extended to include participation from the Central Bank of the United Arab Emirates and the Digital Currency Institute of the People’s Bank of China, and it was renamed the m-CBDC Bridge project.

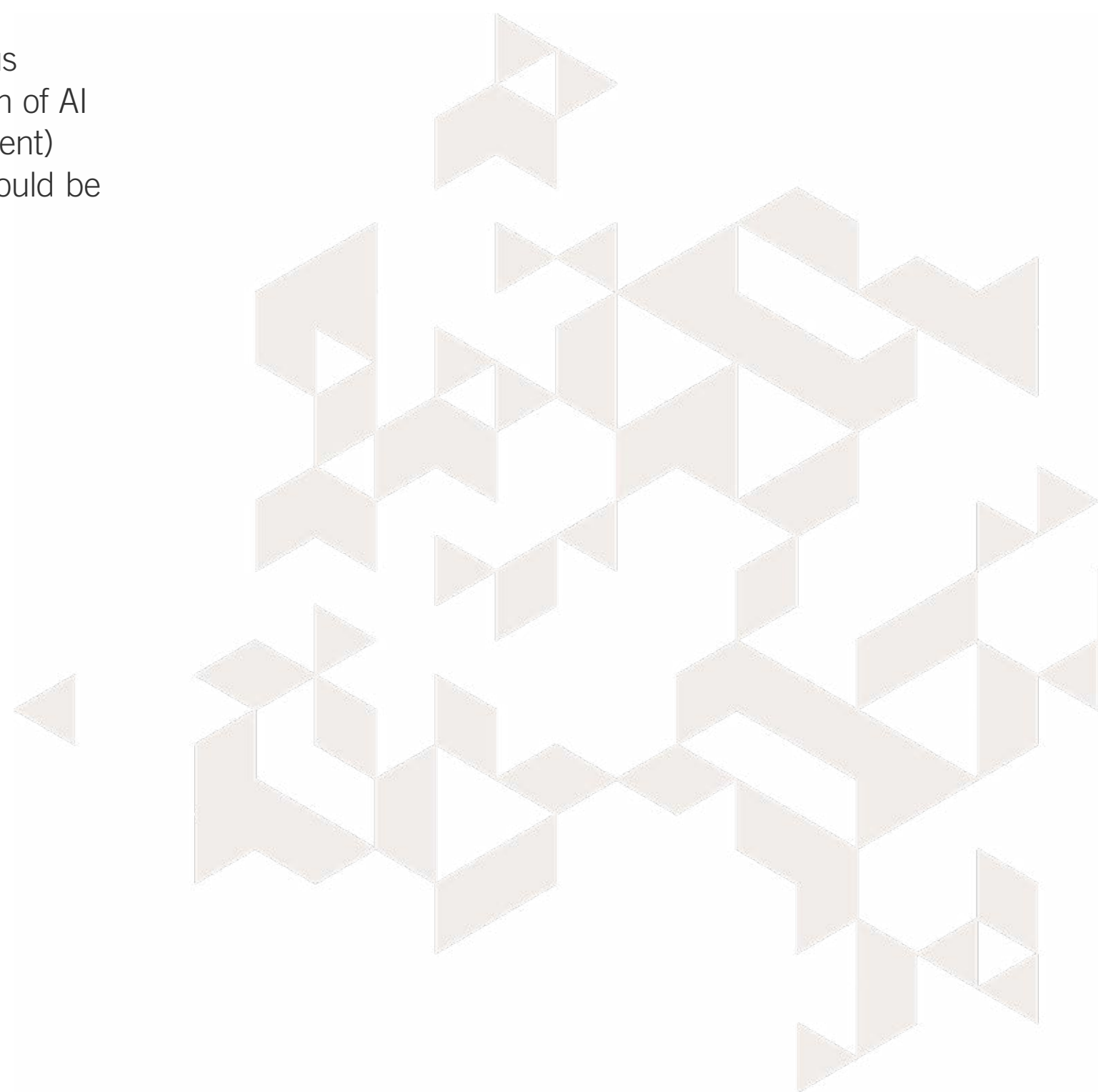
[Read more](#)

This latest phase of the project was further exploring the capabilities of DLT, through developing a proof-of-concept prototype, to facilitate real-time cross-border foreign exchange payment-versus-payment transactions in a multi-jurisdictional context and on a 24/7 basis.

Guidance on the ethical development and Use of AI

The Hong Kong Privacy Commissioner issued AI guidance to facilitate the development and use of AI in Hong Kong. When using AI systems and related technology, the guidance encourages the adoption of three Data Stewardship Values (i.e., being respectful, beneficial and fair to stakeholders) and emphasises a set of seven ethical principles (such as accountability, transparency and need for human oversight) similar to the EU guidelines on using AI, and other international standards.

Most helpfully, the guidance focuses on the various business processes involved in the implementation of AI (from AI strategisation to execution and management) and how these ethical principles and practices should be demonstrated in practice.





Indonesia

2022

Revision of P2P lending regulation

OJK is currently preparing amendment of OJK Regulation No. 77/POJK.01/2016 on IT Based Money Lending Services. The amendment will require the P2P lending provider to demonstrate performance transparency in its platform and regulate on the quality of the members of board of directors and board of commissioners, the requirement to increase authorised capital and obligation to provide loan to micro, small and medium scale enterprises.

Amendment of Electronic Information and Transaction Law

It is the Government's intention to comprehensively amend the outdated Law No. 11 of 2008 on Electronic Information and Transaction, which regulates the management of electronic information and transactions, particularly regarding electronic information, electronic documents, e-signatures and electronic system transactions.

The amendment will introduce provisions on cyber crime, management of internet content (particularly on the criteria of illegal content), responsibility of digital platform and net neutrality principle.

New law on Personal Data Protection

Currently, Indonesia does not have a comprehensive single data protection law. The Government is expected to continue to develop and accelerate the preparation and enactment of a Data Protection Bill which is expected to confirm personal privacy as a citizen's basic right.

The bill will also address regulatory protection towards personal data utilisation, data storage and transfer, including by adopting GDPR provisions.





Indonesia

2021

Digital banks

The Financial Services Authority (Otoritas Jasa Keuangan (OJK)) issued Regulation No. 12/POJK.03/2021 regarding Commercial Banks which also regulates digital banks. A “Digital Bank” is an Indonesian legal entity bank that conducts its business activity through electronic channels without having any physical office, other than the head office or with limited physical office.

Under the new regulation, a digital bank is required to hold a commercial bank business licence and fulfil the specific requirements of using innovative and safe technology, having a prudent digital banking business model and implementing adequate customer data protection.

Traded cryptoassets

The Commodity Futures Trading Supervisory Body issued Regulation No. 7 of 2020 on the Stipulation of List of Cryptoassets That Can Be Traded in Cryptoassets Physical Market. This regulation provides for 229 cryptoassets which are permitted to be traded in the cryptoassets physical market. Prospective cryptoassets physical traders and/or the cryptoassets physical traders may only trade in these listed cryptoassets.

Cryptoassets physical traders trading cryptoassets which are no longer included in the list were required to discontinue the trading within 30 days of the date of this regulation, and to carry out some settlement steps by asking the customers to liquidate the cryptoassets they own or by transferring the customers’ cryptoassets to the customers’ wallet.

Overhaul of regulation of payment systems

The Covid-19 crisis accelerated the shift towards the increased use of fintech platforms for payments. But the financial sector was subject to a complex regulatory web of 135 different guidelines related to payments. Bank Indonesia responded with a major overhaul of payment system regulation by issuing Regulation No. 22/23/PBI/2020 on Payment System, which took effect on 1 July 2021.

The new approach is more flexible to deal with the increasing complexity of payment models. It focusses on the nature of the payment activity and risk instead of the former institutional approach. The payment system is divided into four elements: the mechanism, infrastructure, institutions and the source of funding and access to source of funding. The payment transaction process is divided into: pre-transaction, initiation, authorisation, clearing, final settlement and post-transaction.

Licensing requirements for payment providers

One of the most important aspects of Regulation 22 is the restriction of foreign direct investment for companies carrying out activities in the payment system.

A payment system operator must be licensed and is restricted to an Indonesian licensed bank or an Indonesian non-bank legal entity which is either categorised according to its activities as: (1) a Payment Service Provider, which facilitates payment transactions and requires a licence from Bank Indonesia; or (2) a Payment System Infrastructure Provider, which provides facilities infrastructure used to transfer funds and is determined to be a PIP by Bank Indonesia.

A national standard for payment systems

Bank Indonesia followed Regulation 22 with Bank Indonesia Regulation No. 23/11/PBI/2021 on “Payment System National Standard”. This national standard covers management, risk management, information system safety standard, interconnection/interoperability and/or other aspects of payment systems stipulated by Bank Indonesia. It is expected that the national standard will support banking digitalisation and interlinking banks and fintechs.





Italy

2022

The Fintech Sandbox and the Bank of Italy's "Milano Hub"

Two years after its announcement ([read more](#)), the Italian Fintech Sandbox finally went live in July 2021. The Sandbox aims to promote the adoption of tech solutions in the financial sector, by allowing fintech companies to test innovative products in a lightly regulated environment, for a limited period of 18 months.

Applications can be submitted from 15 November 2021 to 15 January 2022 to the relevant competent authority (Bankit, CONSOB or IVASS), which have published additional guidance on their websites, including the contacts who can be approached to initiate informal discussions. [Read more](#)

In addition to the Sandbox, July 2021 also saw the start of activities of the "Milano Hub", a new department based in Milan through which the Bank of Italy intends to support market operators in developing innovative fintech projects ([read more](#)). The call for proposals – now closed – focussed on Artificial Intelligence, with a cohort of maximum 10 projects admitted.

Change in the regulatory approach to fintech

The simultaneous opening of Sandbox and Milano Hub testifies to not only the ever-growing relevance of fintech in Italy, but also the change in the regulator's position, going from a "wait and see" approach to a more direct involvement. These initiatives are definitively welcomed, although it remains to be seen if they will in fact help Italy reduce the gap with other EU countries where fintech initiatives have found a more favourable environment to grow.

The issuance, trading and settlement of securities in digital form

Notwithstanding the proposal for an EU Regulation on a pilot regime for DLT-based market infrastructures, it remains up to each Member State to ensure that their civil and corporate laws allow for the issuance, trading and settlement of securities on a DLT.

While many EU countries have already introduced targeted changes to their national frameworks, Italy still has to fill this gap. CONSOB and the Ministry of Economics have therefore been discussing how to amend the Italian Civil Code and the Consolidated Law on Finance for these purposes, and an output is expected by mid-2022.

Linklaters is acting as tax advisor to the first Italian end-to-end platform for the issue and placement of security tokens representing alternative investments, in the context of a sandbox promoted by the academic institution CeTIF ([read more](#)).

Stalling of fintech regulatory initiatives pending EU developments

Italian lawmakers struggle to issue rules that specifically target Fintech developments, as most of the initiatives announced in the last couple of years have not gone beyond the public consultation phase. A few examples include:

- > CONSOB's collection of stakeholders' input around the regulation of initial offerings and exchange of cryptoassets, started in March 2019 ([read more](#));
- > the alleged introduction of a national register of virtual asset service providers (dating back to January 2018); and

- > the technical standards that DLTs and smart contracts must meet to produce the legal effects granted to them by Italian Law no. 12-2019 ([Read more](#))

It seems likely that these proposals will be ultimately put aside, overtaken by the corresponding EU law measures.

The Bank of Italy will continue to experiment on cross-border payments, digital euro and DLT-based asset settlement

Following the end of the Italian G20 Presidency, it is expected that during 2022 the Bank of Italy will continue to play an active role within the G20 Roadmap on the enhancement of global cross-border payments, where the work plan has been structured around 19 pillars ("building blocks") aimed at paving the way for a favourable global payments ecosystem. [Read more](#)

The Bank of Italy is also strongly involved in the debate and experimentation over the issuance of a digital euro ([read more](#)) and in testing initiatives for DLT-based asset settlement in central bank money.

Italy

2022 Continued

National strategy on Artificial intelligence

The Italian Strategy for AI, published for public consultation (for the second time) in October 2020 ([read more](#)) is expected to be finally published in 2022. Compared to its previous draft version, the strategy will be adopted by the Interministerial Committee for the Digital Transition (not only the Ministry for Economic Development) and will focus on three main areas: skills, research and application to business and public administration.

The strategy will have a three-year horizon (2022-2024) and will try to narrow the gap with the other EU countries who have already adopted public policies that steer and encourage the development and use of AI technologies.

Want to stay up to date with legal fintech developments in Italy? [Subscribe](#) to Linklaters Italy Digital Pulse, which provides insights and updates on the latest fintech regulatory developments, as commented on by our Linklaters Milan experts.





Italy

2021

CONSOB continues to warn investors about the risks of cryptoassets

Even when endeavouring to support financial innovation, the safety of investors remains CONSOB's primary concern. Wirecard, GameStop and Binance ('s lack of license to issue cryptoderivatives) have all been the topic of CONSOB's attention during 2021.

With specific reference to cryptoassets, the regulator has repeatedly warned about the high risks that they bear for the investors, often cross-referring to the corresponding statements issued by the European authorities. [Read more](#)

That said, in its annual speech to the market, CONSOB's Chairman (Mr. Savona) said that mere warnings are no longer suitable, and that it is time to lay down a clear and complete set of rules. [Read more](#)

Consistent rise in suspicious transaction reports concerning cryptoassets

The rapidly growing interest in cryptoassets is also witnessed by the increase in suspicious transaction reports sent to the Italian Financial Information Unit, which – pursuant to the FIU's annual report – rose from around 500 in 2018 to over 1,800 in 2020.

As a result, the FIU, which has long warned about cryptoassets' use-cases for money laundering purposes, intensified its commitment within this area, by: (1) publishing a specific reporting guide, (2) setting up a dedicated centre for the analysis of STORS and (3) carrying out multiple inspections on national operators. [Read more](#)

New important provisions on cybersecurity

In 2021 the Italian legislator paid considerable attention to cybersecurity, with a view to enhancing the level of protection of the Italian IT systems ([read more](#)). The following governmental agencies were introduced:

- > **Interministerial Committee for cybersecurity** - entrusted with the highest supervision of the national strategy on cybersecurity;
- > **National Agency for cybersecurity** - i.e. an independent authority which shall promote cybersecurity and digitalisation of Italy and act as a single point of contact for the purposes of the NIS Directive; and
- > **Cyber security "core" function** - which will be part of the National Agency and will support the Prime Minister in the prevention and handling of situations of crisis relating to cybersecurity.





Japan

2022

Japan's new Digital Agency

A new government body aimed at upgrading online services and infrastructure in the public sector has begun its work after the Covid-19 pandemic jolted paperwork-bound local governments and companies to accelerate their shift to digital services. One of the biggest projects will be to launch the new "GovCloud".

Currently each government agency is dependent on certain vendors to develop and manage IT systems, including data centres and applications. The Digital Agency will replace this patchwork with cloud computing platforms, such as Amazon Web Services, and let other agencies develop applications on top of this.

Japan to restrict use of foreign tech in telecom, power grids

New regulations for 14 critical infrastructure sectors to bolster cyber defenses, learning from the Colonial Pipeline hack that shut down a major energy artery in America's East Coast, will be introduced by the end of 2022.

The sectors include telecommunications, electricity, finance, railroads, government services and health care. The government will require operators of such key infrastructure to address national security concerns when procuring foreign-made equipment and will suspend or cancel their licence should any major issues arise.

Japan's digital banks emerge with regulatory easing

According to a revised Financial Services Intermediary Act, companies will be allowed to sell a variety of financial products – banking, securities and insurance – under a single financial services brokerage license.

This is seen as making it easier for consumers to access such products via a smartphone app since previously, companies needed to obtain separate licenses for different offerings.

JFSA and BOJ unify bank inspection data

Japan's Financial Services Agency (JFSA) and the Bank of Japan (BOJ) will begin to unify data on inspections of financial institutions. Due to the need to strengthen financial supervision in order to detect risks at an early stage, as a first step, they will start sharing data on banks' financial and other information in April 2022. Further, over the next few years, they are aiming to setting up a system to manage loan information together.

BOJ's digital currency experiment enters second phase, testing cash exchange

BOJ plans to move the digital currency verification experiment into its second phase in April 2022. Based on the first phase of the experiment which began in the spring of 2021, BOJ will examine the exchange for cash and the linkage with private sector payment systems.

The second phase will involve setting limits on the amount of money held and adding interest rates as well as initiatives aimed at improving convenience, such as holding multiple accounts and making offline payments. It will also be connected to an experimental wallet app, with the aim of testing technical issues, although the duration of the experiment has yet to be decided.

Zengin system to be opened to fintech firms

Japanese Banks' Payment Clearing Network, known as Zengin-Net, which currently only permits banks to join, also said it plans to allow fintech companies, including money transfer business operators to directly access the Zengin Data Telecommunication System (Zengin System) from April 1 2022. It has set up two working groups to flesh out details of the framework and system specifications.

To ensure stability of the payment and settlement system, participating money transfer business operators should be on an equal footing with existing member banks, being subject to the collateral system and liquidity provision system stipulated in the domestic exchange system. In addition, Zengin Net, the JFSA and the BOJ must consider, in collaboration with each other, appropriate monitoring measures for participating money transfer operators.





Japan

2021

Reduction of interbank transfer fees

The Japan Fair Trade Commission reported that Japanese Banks' Payment Clearing Network, known as Zengin-Net, lacked "a sufficient governance system" to improve the cost structure, and that nonbank institutions like e-wallet operators are "not able to compete on an equal footing" with banks.

In response, from 1 October 2021, interbank transfer fees – which have been in place for more than 40 years – were reduced from JPY117 for the amounts less than JPY30,000 and JPY162 for amounts of JPY30,000 or more, to a flat JPY62 per transaction.

eKYC services market expands 2.7 times

A survey of the domestic market for eKYC, an online identity verification service, showed that the market generated 4,083 million yen in 2020, 270% of the size of the previous fiscal year, as the November 2018 amendments to the Act on Prevention of Transfer of Criminal Proceeds have made it possible to verify the identity of customers through eKYC, which has prompted financial institutions to introduce related services.

As of the end of May, all city banks had introduced or decided to introduce eKYC and 17 out of 62 regional banks and three out of 38 second-tier regional banks had introduced the system. Businesses that offer matching apps and rental services are likely to adopt eKYC. The market size in FY2021 is estimated at 5.4 billion yen, up 32% from FY2020 and is expected to continue to expand and reach 6.3 billion yen in FY2024.

Bankrupt Mount Gox - proposed rehabilitation plan

A draft rehabilitation plan for Mount Gox, the cryptoasset exchange company that went bankrupt in 2014, was approved by more than 80% of its creditors. Although it has not yet been determined whether the total amount will be paid to all creditors and the detailed refund scheme, it is expected that many creditors will be repaid substantially more than their assessed value at the time of the bankruptcy due to the significant rise in the value of bitcoin (which Mount Gox holds a large amount of).

Relaxation of firewall regulations

The Financial System Council's Working Group on Market Institutions published a report on the review of firewall regulations for domestic customers.

The report reviews the method of prohibiting the sharing of non-public information on customers (limited to "listed companies (groups), etc.") between banks and securities firms within the same financial group, while recommending that customer information management, conflict of interest management and the prevention of abuse of a dominant position be effective as measures to prevent harmful effects.

Based on the report's recommendations, the JFSA will amend the Cabinet Office Ordinance by the end of the year.

Monex to disclose ESG information on blockchain

Monex Group started to offer a system that uses blockchain (distributed ledger) technology to support the disclosure of ESG (Environmental, Social and Corporate Governance) related information. The system will use sensors to collect relevant data, such as the amount of electricity generated by wind and solar power plants, and quickly share accurate information with investors, increasing the transparency of ESG information and encouraging investment decisions.





Luxembourg

2022

Further securities token issuances and other projects involving digital assets

Following the publication of the second Luxembourg DLT law (see Luxembourg 2021), we expect more market participants to make use of the legal certainty offered by this new law. We expect use-cases and real-life projects to come to fruition, both in respect of debt and equity security offerings. Existing projects involving the distribution of investment funds over DLT are also likely to gain further traction.

Virtual Asset Service Provider (VASP) registrations

Towards the end of 2020, the financial regulator (CSSF) created a Luxembourg VASP register, as a result of the widening of the scope of EU AML regulations. In 2021, we saw a number of registrations of VASPs with the CSSF, notably in the area of crypto exchanges and custody of cryptoassets and we expect this number to increase going into 2022.

Luxembourg funds investing in cryptoassets

We expect the current trend of institutional money pouring into cryptoassets to continue. In this context, we expect increasing demand around structuring Luxembourg investment fund vehicles to cater for this new asset class. The market will also be looking at traditional service providers, and whether they will seek to expand their current service offering to include cryptoassets (notably in respect of depositary services).

Further harmonisation of outsourcing rules

We expect further harmonisation in respect of the regulatory requirements applying to IT outsourcing by Luxembourg regulated entities.

Tracking of EU regulatory developments

The Luxembourg market and legislator will closely monitor developments on an EU level, notably in respect of MiCAR and DORA (see EU 2022). As these EU legislative proposals become more concrete, the frequency of industry working groups is likely to increase in order to help prepare for the new EU rules.





Luxembourg

2021

Issuance of tokenised securities using DLT

A new law entered into effect, amending the law of 6 April 2013 on dematerialised securities and the law of 5 April 1993 on the financial sector. The Luxembourg legislative framework now recognises the issuance of native security tokens and their circulation (transfer of ownership) using DLT.

For unlisted debt securities, any EU credit institution or (MiFID) investment firm is now allowed to become an account keeper, provided they comply with certain IT control and security requirements.

New CSSF rules on material IT outsourcing by Luxembourg regulated entities

The CSSF published Circular 21/785 amending various CSSF circulars governing IT outsourcing by Luxembourg regulated entities. This introduced maximum regulatory assessment periods, which is expected to speed up the implementation process of IT outsourcings. Note that, while the Circular no longer uses the expression “regulatory authorisation”, the CSSF can still comment, object, etc., so this goes beyond a mere notification.

The new Circular also offers more flexibility in the choice of the governing law and the cloud outsourcing resiliency location in the case of already established group contracts.

Creation of CSSF Innovation Hub

The CSSF created a department dedicated to financial innovation/fintech topics, serving as a single point of contact for financial innovators and Fintechs. The new department, centred around constructive and open dialogue between the regulator and financial institutions, confirms the CSSF’s stance as an open, pragmatic and future-oriented regulator. In this context, a dedicated form for initiating communications with the CSSF was published.

Memorandum of understanding between CSSF and SEC Thailand

The Securities and Exchange Commission, Thailand (SEC Thailand) and the CSSF signed a Memorandum of Understanding on information sharing on fintech and innovation in their respective financial markets. This framework for cooperation between the two authorities is intended to promote innovation in financial services in two strongly innovation-oriented jurisdictions.

CSSF publication in the context of crowdfunding

Following the publication of the EU Crowdfunding Regulation (Regulation (EU) 2020/1503), the CSSF announced that, as with effect from 10 November 2021, the provision of crowdfunding services from Luxembourg entities is subject to the obtention of a licence as European Crowdfunding Service Provider (ECSP), and the prudential supervision of the CSSF.

The CSSF further clarified that, should an ECSP intend to provide payment services in addition to the crowdfunding services, a separate licence under the Law of 10 November 2009 on payment services may be required.





People's Republic of China

2022

PBOC to release next stage fintech plan

As the People's Bank of China (PBOC)'s 2019-2021 fintech development plan concludes, PBOC is [reported](#) to be issuing its issue next stage fintech plan soon. The 2019-2021 plan has done the top-level design of a route to develop fintech, so the new plan is expected to direct next steps and touch on specific issues, such as improving digitalisation of the finance industry and developing the dual drivers of "technology and data".

PBOC to overhaul non-banking payment institutions regulation – including antitrust provisions

PBOC has circulated a consultation draft on non-banking payment institution regulation. It aims to overhaul the current rule issued over 10 years ago and to tackle major sore points of the payment industry which might progress through 2022. The draft provides for a one-year grace period for payment institutions to achieve compliance.

The antitrust provisions contained in the draft regulation have attracted particular attention in the market. Specifically, the draft regulation sets market share thresholds triggering PBOC's consultation with antitrust authorities on whether to give a warning to or verify the dominant market position of a payment institution.

In addition, the banking regulator may recommend that antitrust authorities intervene to stop abusive practices and the implementation of concentrations of undertakings or, where there is adverse impact on market competition, even break up institutions by reference to their categories of payment business. If enacted, these measures will strengthen the PBOC's powers to supervise the digital payment sector through robust antitrust enforcement.

Reshaping of credit investigation service

PBOC has promulgated rules aiming to crack down on unlicensed credit investigation businesses which will come into effect on 1 January 2022. The rules provide for an 18-month grace period for unlicensed entities to achieve compliance.

The rules are intended to regulate Fintech giants and internet platforms which have been developing "loan facilitation" businesses for quite a few years, i.e., collecting consumers' information, analysing their creditworthiness and setting them up with the lenders.

PBOC has also highlighted that, for collection and use of personal credit information, these new rules follow the Personal Information Protection Law passed in September 2021 (see PRC 2021).

Enhanced cybersecurity review procedures

Cybersecurity Review Measures issued by the Cyberspace Administration for China for public consultation in 2021 are expected to come into effect in 2022. Compared to the version in force since June 2020, the new measures will likely extend the scope of companies which network infrastructure must undergo regulatory review, to cover those which data processing activities may affect national security, or which possess personal data of more than one million users and are looking to list abroad.

Although there is no timetable for when the measures might be finalised, their broad application will likely continue to impact the prospects of China-based fintechs and other platforms that would otherwise look to foreign public investment in 2022. [Read more](#)

New guidance on key data classification

A draft national standard regarding key data should be finalised in 2022. The "Information Security Technology – Identification Guide of Key Data" seeks to prescribe what "key data" or "important data" means under the Data Security Law and other rules central to the management of data in China's increasingly influential digital economy.

Interestingly the September 2021 draft excluded financial information as an example category. This suggests that financial services regulators may be empowered to designate their own industry classifications for these types of data that are subject to localisation requirements, government-led security assessments before cross-border transfers, and other strict compliance requirements.

[Read more](#)

Guidance on ethical use of data

Ethical use of data is an increasing concern for consumers in the mainland China market. It follows that regulators are attaching more and more importance to ESG principles, with the final form of the Personal Information Protection Law being supplemented in August 2021 with restrictions on automated decision-making. The PRC authorities are expected to release specific rules and guidelines for the deployment of AI in the financial services sector in 2022.

[Read more](#)



People's Republic of China

2021

CBDCs – Digital yuan trials keep expanding

The launch of the digital yuan pilot program for mainland China in four initial trial zones plus “Beijing Winter Olympics” scenario in late 2019 was extended to six main cities including Shanghai at the end of 2020. In July 2021, PBOC published the [White Paper on Research and Development of Digital Yuan](#) to illustrate the relevant background, targets, design and policy considerations of digital yuan. PBOC expects to further expand the pilot zones whilst there is still no fixed timeline for formal launch of digital yuan.

Joint efforts against monopolistic practices and disorderly expansion of capital

To further strengthen the regulation of platform companies' engagement in the finance sector, enhance antitrust regulation and prevent the disorderly expansion of capital, PBOC and other financial regulators in April summoned the representatives of 13 platforms engaged in financial services for discussions on their business practices.

As a result of the meetings, regulators requested the companies to make rectifications in areas seen as being regulatory red flags. In September, the head of the PBOC further highlighted the regulator's desire to closely supervise the fintech sector, in particular through exercise of its enforcement powers against algorithm-based discrimination and other typical anti-competitive practices.

Ban on cryptocurrencies

In September, in a dramatic move and following PBOC's briefings with several large banks and Alipay in June on cutting cryptocurrency transactions, PBOC (leading 10 other PRC authorities) declared all cryptocurrencies-related transactions in the PRC to be illegal. The blanket ban is also applicable to offshore cryptocurrency exchanges offering services to PRC residents via the Internet. Onshore entities and individuals are prohibited from supporting cryptocurrency transactions, especially banks, payment institutions, and internet platforms.

Cross-border fintech regulatory sandbox in Greater Bay Area

The PBOC and Hong Kong Monetary Authority entered into a “Memorandum of Understanding on Fintech Innovation Supervisory Cooperation in the Guangdong-Hong Kong-Macau Greater Bay Area”. The two authorities agreed to link up the PBOC's Fintech Innovation Regulatory Facility with the HKMA's Fintech Supervisory Sandbox in the form of a “network”, checking one more item off the “to-do list” of the GBA financial supporting plan issued by four PRC financial regulators, including PBOC in April 2020.

Initiatives under this cross-border regulatory sandbox could include cross-border market access mirroring the EU “single passport” regime, and promoting capital account convertibility utilising digital yuan.

New ethics code to regulate AI

The New Generation AI Governance Expert Committee of China published the [Ethical Norms for New Generation Artificial Intelligence](#). These standards set out six basic ethics requirements relating to human welfare, fairness and justice, privacy and security, control and trustworthiness, responsibility and ethical literacy, and 18 specific ethics requirements for the management, research and development, supply, and use of AI.

New Data Security Law

Mainland China's top legislature approved the Data Security Law which took effect on 1 September. As one of three key laws regulating mainland China's cyberspace, the new law restates and expands restrictions on cross-border transfers of important data, imposes extraterritorial effect on overseas operators that endanger national security or public interests or the legitimate interests of citizens and organisations in the PRC and more broadly raises the data management and security compliance requirements for fintechs and other businesses operating in the PRC.

[Read more](#)

People's Republic of China

2021 Continued

New cybersecurity infrastructure rules

The Regulations for the Security Protection of Critical Information Infrastructure (CII Regulations) came into force on 1 September. The definition of the critical information infrastructure (CII) remains attached to a consistent list of industries, including information services and finance, but the new regulations leave industry regulators to determine which fintech players are CII operators within their sectors.

These businesses will be subject to higher compliance requirements such as data localisation, government-led security assessments for cross-border transfers of data, and cybersecurity review procedures when procuring key systems. [Read more](#)

First data privacy law launched

Mainland China's first comprehensive privacy law, the Personal Information Protection Law, took effect on 1 November. It prescribes much stricter rules for processing personal information, undertaking cross-border transfers (including regulator security assessments and use of GDPR-esque standard contractual clauses), but also enhances the rights of individuals in response to societal concerns on data misuse in the world's second largest digital economy.

Additional compliance requirements specific to very large platforms will also undoubtedly impact mainland China's fintech champions. [Read more](#)





Russia

2022

Testing of Digital Russian Ruble pending

The Russian Central Bank (CBR) is planning to start testing the Digital Russian Ruble (DRR) in early 2022. As described in the CBR's [Digital Ruble Concept](#) and [consultation paper 'A Digital Ruble'](#) DRR will be an additional form of money, circulating alongside cash and non-cash rubles and be freely convertible into these other forms. Despite being called “digital currency”, the DRR is not a cryptocurrency but is rather a digital version of the national currency and its stable operation will be ensured by the state represented by the CBR.

The CBR has formed the pilot group of 12 Russian banks to start testing in January, which will be carried out in several stages throughout 2022. Based on the results, a roadmap for the DRR will then be prepared. According to the CBR officials, the DRR platform will be designed with the ability to interact with similar platforms in other countries e.g. the digital yuan.

Dedicated law on cryptocurrencies

In 2022, we are expecting the adoption of a more detailed law regulating procedures for the issuance and circulation of cryptocurrency as a form of investment in Russia. It is currently not clear whether requirements for cryptocurrencies will be tightened or, on the contrary, liberalised compared to the current regime as there is an ongoing discussion on the subject in various fora.

Restriction of investments into cryptocurrencies for non-qualified investors

According to some high-ranking Russian officials, a restriction on non-qualified investors making investments in cryptocurrencies may be raised to the level of federal legislation in 2022. Currently the CBR limits investments by unqualified investors in any cryptocurrency instruments to RUB 600,000 (c. EUR 7,000).

Experiment on blockchain data exchange for digital mortgages

Under the Russian governmental decree, the testing of blockchain-based data exchange in the process of mortgage registration through the Russian distributed ledger “Masterchain” will be held throughout 2022. The project will be implemented by the CBR, the Federal Service for State Registration, Cadastre and Cartography (Rosreestr), the Ministry of Digital Development and Dom.RF (an integrated housing development institution). Masterchain will be used to exchange information between depositories for accounting and storage of electronic mortgages and Rosreestr.

Russian National Payment System Development Strategy 2021-2023

The CBR's [National Payment System Development Strategy for 2021-2023](#) describes a number of new initiatives to be implemented in the next three years including: (1) the launch of the Russian digital ruble; (2) emergence of non-bank payment service providers; (3) introduction of open APIs; (4) creation of a mechanism for a quick change of servicing banks; and (v) introduction of e-invoicing.

The strategy also envisages further development of the national payment infrastructure, including the Faster Payments System, the Financial Messaging System, and the MIR card payment system.

Taxation of cryptocurrencies

In 2022, we may see the final enactment of a federal law on the taxation of cryptocurrencies. The bill envisages an increased fine in the amount of 40% of any unpaid taxes on crypto transactions. It also requires Russian crypto users to report their cryptocurrency positions and transactions to the Russian tax authorities if the annual volume of such transactions exceeds RUB 600,000 (ca EUR 7,000) with material fines for breach.

The draft law has been severely criticised by the various interested parties, in particular, for its inconsistency with the other existing legislation on cryptocurrencies, and it is likely to be substantially re-drafted before it is finally enacted.

Russia

2022 Continued

Regulation of crypto mining activities may appear in Russia

Mining of cryptocurrencies currently remains unregulated in Russia. According to Russian officials, regulation of mining activities may be introduced soon, including recognition of mining as an entrepreneurial activity, taxation of such activity, and special tariffs for energy consumption for mining companies.

On a related note, a number of major companies involved in oil production in Russia have recently approached the Russian government with an idea to organise the mining of cryptocurrencies at their extraction fields, utilising the associated petroleum gas to generate electricity that can be used in the mining. If approved, the implementation may be launched during the course of 2022.

Tech giants required to open offices in Russia

A new federal law sets out a legal framework governing certain aspects of the activities in Russia of overseas tech companies, with a daily audience exceeding 500,000 Russian internet users. By 1 January 2022, overseas tech giants will be required to establish a branch, rep office or incorporate a local entity in Russia.

The offices to be opened by such companies will represent their headquarters in Russia and serve as their contact point for the local regulators, represent them in courts and be responsible for taking measures aimed at restricting access to information posted on their platform in violation of Russian law.

Failure to comply could result in a ban on advertising, on marking searches in or making payments to, the relevant platform, restriction of collection and cross-border transfer of Russian individuals' personal data or a partial or complete blocking of access to the platform in Russia.

[Read more](#)





Russia

2021

Law on digital currency and digital financial assets

A federal law on digital financial assets and digital currency came into force at the start of the year. Under the law, digital currency (i.e. cryptocurrency) can be used as an investment tool or a payment method.

However, Russian legal entities, Russian branches of foreign legal entities and individual tax residents are prohibited from accepting digital currency as a means of payment and from advertising the possibility to settle in digital currency in Russia. Other than that, provisions on digital currency are rather scarce, and another federal law remains to be adopted, which would set out in detail procedures for the issuance and circulation of digital currency in Russia.

The law also governs procedures for circulating “digital financial assets” (DFAs) in Russia. DFAs are digital rights which may include monetary claims, participation rights in a non-public joint stock company, possibility to exercise rights attached to shares, bonds or other securities or right to demand the transfer of securities. This concept is similar to a security token in other jurisdictions.

Any transactions with DFAs must be performed through so-called DFA exchange operators, which are largely similar to cryptocurrency exchanges in other jurisdictions. The new law provides a set of rules for DFA information system operators and DFA exchange operators, including corporate governance rules and qualification/business reputation requirements for members of their management bodies and 10% shareholders.

Both types of operator must be Russian legal entities and must be included on the respective registers maintained by the CBR. Their shareholders may be foreign entities, but the shareholders of DFA exchange operators may not

include legal entities registered in tax offshore havens. The DFA exchange operators must either be duly licensed banks or trade organisers, or meet the minimum charter capital/net assets requirements.

Strengthening of requirements for use of e-wallets

2021 saw the tightening of requirements for using e-wallets. In particular, Russian citizens must declare their cash positions on overseas-based electronic platforms to the Russian tax authorities if the annual volume of their transactions on such platforms exceeds RUB 600,000 (c. EUR 7,000).

Furthermore, following amendments to currency control legislation, foreign e-wallets cannot be used to pay for goods, works and services in Russia, as well as to make transfers related to foreign trade activities or loan agreements. These restrictions do not apply to payment cards if the issuing payment system meets the operating requirements for foreign payment systems in Russia (i.e. registration of a subsidiary and systems rules in Russia etc.).

Digital sandboxes for emerging tech in financial markets and other sectors

A federal law introducing a framework/procedures for so-called “regulatory sandboxes” came into force. These are experimental regulatory regimes aimed at live-testing emerging technologies in various sectors including financial markets, healthcare, transport, and online commerce. Residents of the sandbox are temporarily exempt from usually applicable regulatory restrictions which could potentially hinder the launch of innovative new products.

The law sets out procedures for initiating and using regulatory sandboxes which can be further clarified by the Russian government. The regulatory sandbox can be launched at the initiative of any legal entity, individual entrepreneur or state authority aiming to test the respective technology. By default, it is established for a term of three years, which may be extended by one more year in certain circumstances. The Russian government has approved a list of technologies which may be tested in the regulatory sandboxes, which includes AI, Big Data, robotics, virtual and augmented reality, internet of things, neuro and quantum technologies.

It is not the first attempt to introduce digital sandboxes in Russia. Earlier in the year, another federal law came into force which established a sandbox for testing AI technologies in Moscow. Another project is the CBR’s regulatory sandbox in the financial sector launched back in 2018. The new legislation is aimed at widening the use of digital sandboxes in Russia and making their regulation more consistent.



Singapore

2022

The future of money, finance and the internet

Mr Ravi Menon, Managing Director, Monetary Authority of Singapore (MAS), [highlighted](#) at the Singapore Fintech Festival the MAS' views on blockchains, crypto tokens, stablecoins and central bank digital currencies (CBDCs), as well as key initiatives Singapore has embarked on to harness the benefits of innovations in money, digital finance and the new age of the Internet.

Payment Services (Amendment) Act

The Payment Services (Amendment) Act was passed in January 2021 although the relevant amendments are still due to come into force. The PS(A)A aligns the Payment Services Act 2019 with recommendations of the Financial Action Task Force, the international AML and CFT standards-setter, and will provide for the expansion of the scope of cross-border money transfer services, domestic money transfer services and digital payment token services. [Read more](#)

More Payment Services licences granted

The Monetary Authority of Singapore has granted several DPT providers, such as DBS Vickers and Independent Reserve, licences under the Payment Services Act in 2021. Given that the MAS recently granted in-principle approval to several payment services licence applicants, more licences are expected to be issued.

Scope of e-money and digital payment tokens

The MAS is due to issue its response to feedback on its [consultation paper](#) issued in December 2019, which sought views on whether the MAS' current approach regulating e-money and digital payment tokens under the Payment Services Act remains appropriate in light of industry developments.

Regulation of Buy Now Pay Later schemes

The MAS has been engaging Buy Now Pay Later providers and reviewing the experience in other jurisdictions where such schemes are more prevalent, to [assess](#) whether a regulatory framework is necessary to guide the evolution of BNPL schemes as they become more widely used in Singapore. This could include adoption of fair dealing practices by BNPL schemes, such as clear disclosure at the point of account opening to ensure that consumers are fully aware of the late fees chargeable if they do not pay on time.

Singapore's Paynow to link with Malaysia's DuitNow and India's UPI

A phased linkage of Singapore's PayNow with (1) Malaysia's DuitNow and (2) India's Unified Payments Interface real-time payment will commence in 2022. This will allow customers of participating financial institutions to make real-time fund transfers between Singapore and Malaysia ([read more](#)) and instant, low cost fund transfers from India to Singapore using mobile phone numbers and from Singapore to India using UPI virtual payment addresses ([read more](#)).

Singapore and the Philippines to pursue cross-border payment linkages

The MAS and the Bangko Sentral ng Pilipinas (BSP) have also signed an [enhanced FinTech Cooperation Agreement](#) (CA) to facilitate interoperable payments between Singapore and the Philippines. The CA will link both countries' real-time and QR payment systems, to provide instant, seamless and low-cost cross-border payments. [Read more](#)

The project is aligned with the G20's efforts to address existing frictions in global cross-border payments, and contributes to Association of Southeast Asian Nations' (ASEAN) goal of establishing regional payments integration by 2025.

The MAS enhances Fintech Regulatory Sandbox with Sandbox Plus

The MAS announced [three enhancements](#) to its Fintech Regulatory Sandbox framework to further catalyse financial innovation and Fintech adoption – namely by expanding the eligibility criteria to include early adopters of technology innovation, streamlining application with financial grant, and introducing the Deal Fridays programme, a platform for deal-making opportunities. The enhancements are part of Sandbox Plus, which takes effect on 1 January 2022.

The MAS and industry to pilot digital platforms for better data to support green finance

The MAS announced that it will partner the industry to [pilot four digital platforms](#) under Project Greenprint, to address the financial sector's needs for good data on sustainability. The common utility platform pilots (i.e. Greenprint Common Disclosure Portal, Greenprint Data Orchestrator, Greenprint ESG Registry and Greenprint Marketplace) are expected to be completed in the second half of 2022. [Read more](#)

Singapore

2022 Continued

Potential of the insurance industry to support Asian economies in seizing opportunities in climate change and digitalisation

At the Singapore International Reinsurance Conference (SIRC) 2021, Mr Lawrence Wong, Minister for Finance and Deputy Chairman of the MAS [emphasised](#) the need for the insurance industry to work systematically with policymakers in supporting climate risk mitigation and adaptation measures, and cutting greenhouse gas emissions and transitioning to a low carbon economy.

An effective and inclusive transition to Net Zero

At the Green Horizon Summit@COP26, Mr Ravi Menon, Managing Director of MAS, [highlighted](#) three areas to get right to catalyse green finance – clear taxonomies; innovative solutions to unlock and catalyse multiple sources of financing; and supervision of how financial institutions are managing their climate-related risks.

FI-FI information-sharing platform for AML/CFT

The MAS is consulting on the introduction of a regulatory framework and COSMIC, a secure digital platform for financial institutions to share risk information with each other to prevent money laundering, terrorism financing, and proliferation financing. COSMIC will be developed and deployed in phases, with an initial focus on combating the key risk areas of misuse of legal persons, trade-based money laundering and proliferation financing. [Read more](#)

Anti-money laundering and AI

The MAS is encouraging financial institutions to adopt data analytics in a manner that is commensurate with the risk profile of the business, to fight against money laundering. Crucially, this requires the mobilisation of data analytics elements at the customer, network and system levels.

[Read more](#)

Amendments to Singapore Personal Data Protection law

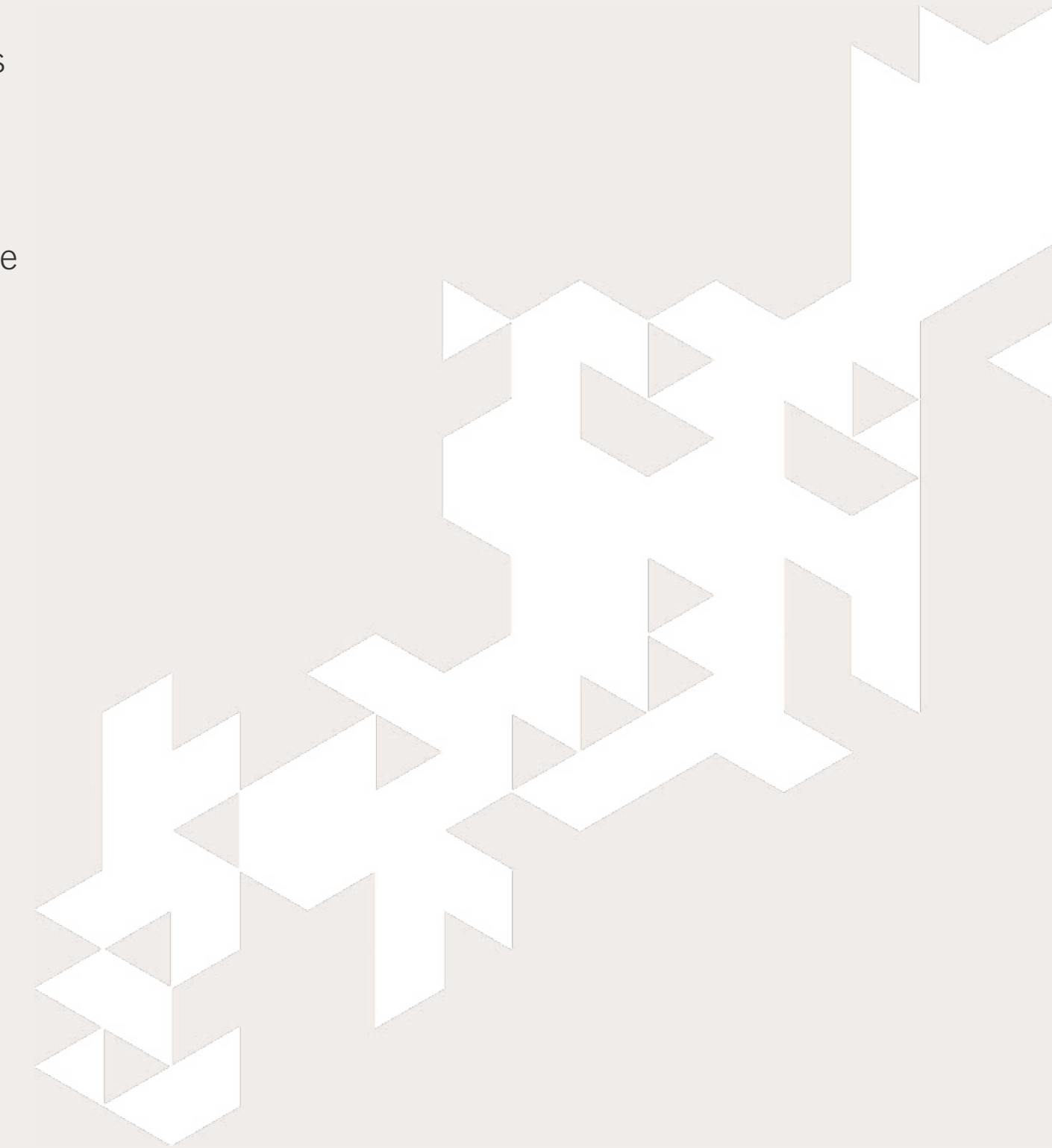
There are amendments to the Personal Data Protection Act (see Singapore 2021), which have been delayed in coming into force until at least February 2022, including a ‘data portability’ obligation which requires an organisation to transmit a requesting individual’s personal data to another organisation with a presence in Singapore. There are also increased penalties for data breaches with a potential liability of up to 10% of an organisation’s annual turnover in Singapore, or SGD 1 million, whichever is higher.

[Read more](#)

Online harms laws

The Singapore government has suggested that new laws could be drawn up to counter harmful online content such as violent extremist propaganda as well as the dissemination of voyeuristic material and intimate images without consent.

The Ministry of Communications and Information also launched an ‘Alliance for Action’ to tackle online harms, especially those targeted at women and girls. The alliance will look into partnerships with various stakeholders and test out initiatives. There may be new legislative levers proposed as a result of these initiatives.





Singapore

2021

The MAS' initial assessment of the economic case for a retail CBDC in Singapore

The MAS has published a [paper](#) setting out its initial assessment of the economic case for a retail CBDC in Singapore and its potential implications for financial stability and monetary policy.

Winners of MAS Global CBDC Challenge

15 finalists (comprising financial institutions, Fintechs and technology solution providers) of the [MAS Global Central Bank Digital Currency Challenge](#) to develop retail CBDC solutions, progressed to the Acceleration Phase of the Global CBDC Challenge and pitched their solutions at a Demo Day to an international panel of judges at the Singapore FinTech Festival 2021. The [winning innovative solutions](#) were CBDCgo, The Atomic CBDC solution, and G+D Filia.

World's first digital trade financing pilot between MLETR-harmonised jurisdictions

Singapore's Infocomm Media Development Authority, the MAS and the Financial Services Regulatory Authority of Abu Dhabi Global Market, in collaboration with commercial partners DBS Bank, Emirates NBD and Standard Chartered, have successfully concluded the [world's first cross-border digital trade financing pilot](#) of its kind.

This harmonises the legal recognition of digital documents such as electronic bills of lading (eBLs) across both jurisdictions, and complements the larger global trade movement by the G7 economies on adopting electronic transferable records in international trade.

Foundational digital infrastructures for inclusive digital economies

The MAS co-produced a report on the foundational digital infrastructure necessary for an inclusive digital economy and seamless cross-border transactions around the world. The report identifies four conceptual pillars to build a digital infrastructure that can drive growth in the digital economy of the future: digital identity, authorisation and consent, payments interoperability, and data exchange.

[Read more](#)

Singapore FinTech Festival

The world's largest FinTech event, [Singapore Fintech Festival](#), kicked off in November with a focus on Web 3.0 (the use of distributed ledger technology to drive new decentralised infrastructures and business models in the digital economy) and its impact on financial services.

The week-long festival, which included access to the World FinTech Festival, featured more than 350 sessions, over 700 speakers, over 260 exhibitors, and 14 international pavilions. The event was streamed "live" to over 60,000 participants, including representation from more than 7,000 companies, government agencies, educational institutions and organisations from over 130 countries.

Winners of the Global Veritas Challenge 2021 announced at Singapore FinTech Festival

This year's Challenge focused on four use cases, namely (1) product marketing; (2) risk, compliance and fraud monitoring; (3) loan origination and know-your-customer; and (4) credit scoring and profiling. The [three winners](#), selected from a pool of 10 finalists, successfully addressed key challenges in validating the fairness of artificial intelligence solutions for specific banking use cases.

AML/CFT guidance

The MAS published a guidance [infographic](#) setting out an overview of the MAS' anti-money laundering requirements, and related supervisory expectations for the Digital Payment Token sector (e.g. requirements in respect of value transfer). The infographic supplements existing anti-money laundering/counter-financing of terrorism requirements, and should be read in conjunction with Notice PS-N02 and accompanying guidelines.

Bolstering cyber defences in finance

The MAS Cyber Security Advisory Panel (CSAP), comprising experts in cyber security from around the world, provided [insights](#) on how the MAS and financial institutions can bolster their cyber defences.

At its fifth annual meeting, held virtually in October 2021, the CSAP supported the adoption of "zero-trust" security principles and architecture to tackle advanced cyber threats and IT supply chain attacks. In addition, the panel also discussed cyber risks and mitigating actions in emerging technologies like blockchains and digital currencies.

Singapore

2021 Continued

National Artificial Intelligence Programme in Finance

The [National Artificial Intelligence \(AI\) Programme in Finance](#) was launched at the [Singapore FinTech Festival x Singapore Week of Innovation and TeChnology](#) (SFF x SWITCH) 2021 by Mr Heng Swee Keat, Deputy Prime Minister. The Programme is a joint initiative by the MAS and the National AI Office at the Smart Nation and Digital Government Office. It aims to increase productivity through the adoption of AI, create new jobs through increased AI innovation activities and upskilling in AI-related competencies, and improve societal acceptance of AI through sound AI governance.

Updates to Technology Risk Management Guidelines

The MAS issued updated Technology Risk Management Guidelines that took effect in January 2021. Key amendments to the TRM Guidelines include enhanced risk mitigation strategies for financial institutions, expectations of financial institutions to oversee third-party arrangements, and additional guidance on the roles and responsibilities of the Board and Senior Management. [Read more](#)

Investment holdings data included in SGFinDex

The MAS and the Smart Nation and Digital Government Group launched the [second phase of the Singapore Financial Data Exchange](#) (SGFinDex). Individuals can now view information on their investment holdings at The Central Depository (CDP) as part of their consolidated financial position via participating banks' financial planning applications and MyMoneySense, a free government financial planning digital service. In the next phase, individuals can look forward to accessing information on their insurance policies through SGFinDex as well.

Update to Singapore Data Protection law

A number of major amendments to the Personal Data Protection Act came into force including: (1) the introduction of a mandatory breach requirement requiring business to notify the Personal Data Protection Commission and affected individuals if there is a data breach of significant scale or resulting in significant harm (see updated guide [here](#)); and (2) the relaxation of certain consent requirements such as the "legitimate interests" and "business improvement" exceptions, and expansion of the deemed consent requirements. [Read more](#)





Spain

2022

CNMV circular on crypto advertising.

In Q2 2021 the CNMV published [draft new rules](#) intended to regulate communications used to advertise cryptoassets as an investment, by imposing rules on the content and presentation of those communications. They also subject mass advertising campaigns to a pre-approval regime. The draft rules are expected to come into effect at the start of 2022.

Finetuning of AML rules

Amendments for the implementation of AMLD5 were passed by means of urgent Royal Decree-law in July 2021 but they are being further reviewed in ordinary parliamentary procedure. We expect that a number of amendments will be passed as part of it and will come into force in 2022.

New Securities Market Law

A draft bill to publish a restated Securities Market Law and developing regulations is expected to be passed during 2022. It includes several items that may be of interest in the fintech space, including the implementation of the Crowdfunding Directive and the explicit recognition of DLT as a valid form of issuance of financial instruments.

Want to stay up to date with legal fintech developments in Spain? [Subscribe](#) to Linklaters Spain Payment Services Quarterly Newsletter, which provides updates on the latest fintech regulatory developments in Spain and internationally.



Spain

2021

Financial regulatory sandbox

The first cohort of sandbox participants was selected, including 18 projects based on technologies such as digital identity/biometrics, blockchain, cloud computing, AI, IoT and big data. A second application period opened between 1 September and 13 October and the projects are awaiting selection.

The sandbox is of interest to fintech start-ups that want to launch new technology-based financial products and services in Spain, but also to well-established actors that want to use it as a step before bringing innovative projects to market.

Implementation of AMLD5 into Spanish law

The necessary amendments to Spanish law for the implementation of the fifth AML directive were enacted in 2021. They included: (1) new obligated subjects, such as cryptocurrency exchange and wallet firms, (2) a unified and cohesive registry of beneficial ownership, and (3) enhancement and clarification of UBO rules.

Register of virtual currency services providers

The [Bank of Spain](#) started accepting applications for the register of providers of exchange services between virtual currencies and fiat currencies and custodian wallet providers at the end of October 2021. Individuals and entities providing these services in Spain have until 29 January 2022 to register.

Clarification on Spanish collective schemes exposure to cryptocurrencies

The CNMV clarified through a Q&A document that Spanish UCITSs and certain AIFs may only have indirect exposure to cryptocurrency markets. In these cases, they may not directly hold cryptocurrencies, but they may invest in certain securities whose return depends on their prices. In the case of hedge funds, these may also enter into derivatives with cryptocurrency as the underlying asset.



Sweden

2022

Market evolution

InvestStockholm has predicted in its 2021 Fintech guide, that the next big growth areas in Swedish fintech will be DeFi, RegTech, InsurTech, and Green FinTech. [Read more](#)

Funding boost for the SFSA's innovation centre

In its proposed budget for 2022, the Government has earmarked SEK 10 million to fund the SFSA's Innovation Center, with a further estimated SEK 10 million in 2023 and 2024. This will be in addition to the funding of the Innovation Centre that comes from the SFSA's budget.

E-krona pilot continues

The E-krona pilot is set to continue in 2022 with the next step seeking to further test and investigate the possible technical solutions for the infrastructure. The objective of the second phase is to (1) integrate the proposed infrastructure with internal systems of potential participants, (2) develop off-line functionality, (3) test different forms of storage of tokens and keys, (4) develop support for addressing payment functionality for users, (5) evaluate and improve performance and scalability, (6) integrate the infrastructure with existing point of sale terminals, and (7) continue to analyse the E-krona network infrastructure.

Whilst the first phase of the pilot was tested in an isolated environment, the next stage will be tested together with a potential participant in the network, in this case Handelsbanken. The results of this next stage are expected to be presented in November 2022.

New service in RIX for immediate payments

The Swedish Central Bank (*Sw. Sveriges Riksbank*) has entered into an agreement with the Eurosystem to use the TARGET Instant Payment Settlement ("TIPS") platform. This platform will, after certain modifications are made, supplement the RIX payment system with a new service, the so-called RIX-INST, which means that payments in central bank money can be settled between banks in real time around the clock and all year round. The new service is expected to be implemented in RIX during 2022.

[Read more](#)

Review of the Swedish payments system

Along with the developments in the E-krona, P27 and RIX-INST, an inquiry has been launched to review the state's role in the payment market and take a position on what the role should look like in the future. Among other things, the review will cover how the payment market operates today, map the division of roles between private actors and the state and provide a view on the need for the Riksbank to issue digital central bank money. The review is expected to be published at the end of 2022.

Data protection focus area – individual complaints

Complaints from individuals will continue being a focus area for the Swedish Data Protection Authority

During 2021, the focus area for the Swedish Data Protection Authority (IMY) (*Sw. Integritetsskyddsmyndigheten*) was handling complaints from individuals, which has resulted in a number of sanctions for data protection breaches. Complaints from individuals will continue to be IMY's focus area during 2022.



Sweden

2021

Market evolution

The Swedish fintech market continued to prosper. Klarna cemented its position as the highest-valued private fintech in Europe with the expectation of an IPO in the near future. A number of large deals took place in 2021, including Visa's acquisition of Tink. The largest segment of the Swedish fintech market is still digital payments.

E-krona pilot

The Swedish Central Bank (*Sw. Sveriges Riksbank*) published a report from the E-krona pilot, which establishes that the distributed ledger technology used in the project is viable. Phase 2 of the project will look to expand on the functionality of the system (see YTC). Further policy work is also required to establish exactly how the e-krona should be used, including whether its use should be capped and whether it should be interest bearing. [Read more](#)

SFSA round table on cryptoassets

A cryptoassets round table in May gave the SFSA the opportunity to reiterate its concerns with cryptoassets, which include: (1) market abuse and AML concerns; (2) consumer protection and fraud concerns and (3) the environmental costs of cryptoassets.

Cross-border payments – P27 update

Progress continued for P27, the joint initiative by Danske Bank, Handelsbanken, Nordea, OP Financial Group, SEB and Swedbank on cross-border payments. In July, P27 secured merger approval from the EU commission. This means that P27 can proceed with the preparations in Denmark, Finland and Sweden. The ambition is that the first transaction in the planned payment infrastructure will be processed in 2023. [Read more](#)

BIS Innovation Hub Nordic Centre

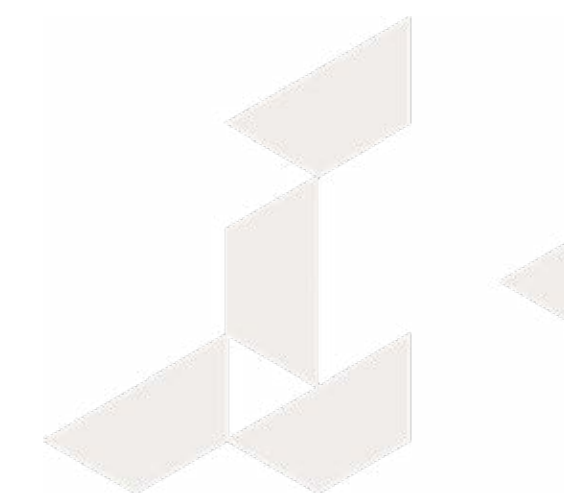
The Bank for International Settlements and the central banks of Denmark, Iceland, Norway and Sweden launched the Innovation Hub Nordic Centre in Stockholm. The Nordic Centre will focus on, among other things, central bank digital currencies, next generation financial market infrastructure, cybersecurity and green finance. [Read more](#)

Cooperation regarding data protection and AI

The Swedish Data Protection Authority (IMY) (*Sw. Integritetsskyddsmyndigheten*) initiated a collaboration with AI Sweden, the Swedish national centre for applied artificial intelligence supported by the Swedish government, to provide support and guidance on issues relating to artificial intelligence (AI) and data protection. IMY and AI Sweden will join efforts to provide support and guidance regarding the legal issues identified. The cooperation extends to 31 March, 2023.

Swedish Police Authority fined for data breach

The Swedish Data Protection Authority (IMY) (*Sw. Integritetsskyddsmyndigheten*) imposed a fine of SEK 2.5 million (c. EUR 250,000) against the Swedish Police Authority for having processed personal data in violation of the Criminal Data Act through its use of the face recognition application Clearview AI, that matches faces to a database of more than three billion images indexed from the Internet, including social media applications.





United Arab Emirates

2022

UAE onshore

Central Bank Digital Currency

The UAE Central Bank has announced plans to introduce a digital currency as part of its 2023-2026 strategy. As part of the UAE's Vision 2021 and the National Agenda, the UAE is focused on developing its fintech sector and the digital transformation of the financial services sector, supported by Government strategies.

Increased acceptance of cryptocurrency business

Following the opening of the Dubai Multi Commodities Centre Crypto Centre in 2021, the DMCC is positioning itself to become a hub for businesses focused on the development of crypto and blockchain technologies. Ahmed bin Suleyman, the CEO of the DMCC announced that he expects more than 1,000 cryptocurrency businesses to be operational in Dubai by 2022.

Federal Data Protection Regime

As was the case in 2021, we expect data protection to continue to be a priority in 2022 and that initiatives will commence to put in place a federal level data protection regime, most likely modelled on the data protection laws that were passed in the DIFC in 2020. We also expect any data protection regime to focus on data localisation requirements and restrict cross-border transfers of data.

Dubai International Financial Centre (DIFC)

Expected regulation of cryptocurrencies

Following the implementation of the DIFC's regulation of security tokens, the Dubai Financial Services Authority is expected to implement a framework for the regulation of tokens that are not otherwise covered by the newly implemented regulatory framework. These are expected to cover exchange tokens (e.g. cryptocurrencies), utility tokens and certain asset-backed tokens (e.g. stablecoins).

Expected regulation of enabling technologies

Following the close of the unprecedented joint-public consultation on the use of enabling technologies (Application Programming Interface (API); data analytics; artificial intelligence; biometrics; cloud computing; and distributed ledger technology) by all financial services regulators in the UAE, we anticipate that each financial services regulator will likely implement regimes aimed at regulating the use of such technologies by licensed financial institutions.

Abu Dhabi Global Market (ADGM)

Proposals on digital verification of identity

Following a period of consultation, the FSRA is expected to publish in 2022, enhancements to its regulatory framework to help facilitate the use of non-face-to-face digital verification of identity (eKYC) in the ADGM.





United Arab Emirates

2021

UAE onshore

Regulatory focus on payment services

The UAE Central Bank focused on updating and revamping its regulatory framework in respect of new and innovative payment services with the introduction of: Circular No. 9 of 2021, Concerning the Large Value Payment Systems Regulations, Circular No. 10 of 2021, Concerning the Retail Payment Systems and Circular No. 15 of 2021 Concerning the Retail Payment Services and Card Scheme Regulation.

Testing common digital currency

The UAE Central Bank and the Saudi Arabian Monetary Authority explored ways to make cross-border payments more efficient through their collaboration on a blockchain-based digital currency network.

UAE Central Bank digital currency

The UAE Central Bank participated in a CBDC project with the Hong Kong Monetary Authority: The UAE Central Bank has been investigating the use of central bank digital currency in cross-border payments and joining the multiple central bank digital currency bridge (m-CBDC Bridge) project collaboratively implemented by the Hong Kong Monetary Authority, the Bank of Thailand, the Digital Currency Institute of the People's Bank of China and the Bank for International Settlements Innovation Hub Centre in Hong Kong.

Heightened focus on AML risks

2021 saw a renewed focus by the UAE Central Bank on addressing AML risks by way of heightened guidelines to regulated financial institutions in respect of their AML obligations as well as a more stringent enforcement policy.

Increased recognition of cryptoassets

The Securities and Commodities Authority, the onshore UAE's securities regulator and the Dubai World Trade Centre Authority entered into an arrangement whereby the regulation, offering, issuance, listing and trading of cryptoassets and related financial activities within the Dubai World Trade Centre Authority free zone has been permitted.

Dubai International Financial Centre (DIFC)

Joint public consultation on guidelines for adopting enabling technology

A joint public consultation was launched by the financial services regulators in the UAE, DIFC and ADGM on draft guidelines for licensed financial institutions using enabling technology (Application Programming Interface (API); data analytics; artificial intelligence; biometrics; cloud computing; and distributed ledger technology).

Regulation of Security Tokens

The Dubai Financial Services Authority implemented a new regulatory framework for "Investment Tokens" being tokens that are either a "Security Token" or a "Derivative Token". The regulatory framework expressly recognises cryptographically secured digital representation of rights and obligations issued, transferred and stored using DLT or other similar technology as investment products in the DIFC.

Abu Dhabi Global Market (ADGM)

FSRA enacts enhancements to its Money Services regime

The FSRA enhanced its existing Money Services regulatory framework to better reflect modern and innovative methods of conducting the regulated activity of providing payment accounts and issuing stored value within the ADGM. The aim of the enhanced regulatory framework is to cater for a wide-range of money services providers (aimed at filling the market need from varying businesses) and to encourage innovation in the money services sector in ADGM with a bespoke set of conduct of business rules and prudential regulation to better reflect the nature of these activities.





United Kingdom

2022

Regulation of stablecoins and cryptoassets

Further clarity on the UK's approach to regulating stablecoins and other cryptoassets is highly anticipated. Whilst the papers published in 2021 gave some indication as to the broad direction of travel, there remains a significant degree of uncertainty as to exactly how the UK will regulate cryptoassets and stablecoins and what measures it will take to facilitate innovation in the financial markets.

Property status of digital assets

Following a call for evidence on digital assets in 2021, the Law Commission plans to publish a consultation in mid-2022 on whether it would be appropriate for English law to recognise that certain digital assets could fall within a “third category” of personal property which is neither a thing in action nor a thing in possession, and how that category of property should be treated.

More to come on “Bitcoin”

The Bank of England will consult on the case for launching a retail CBDC in 2022. [Read more](#)

Regulating BNPL

The UK Government will draft legislation bringing Buy Now, Pay Later into the scope of the Consumer Credit Act ([read more](#)). The FCA will also consult on how it intends to apply its rules to BNPL providers. [Listen more](#)

Payments chains

The UK Government will consult on bringing systemically important firms in payments chains under the supervision of the Bank of England. [Read more](#)

The FCA's approach to payments firms

Strong customer authentication rules will apply to e-commerce transactions following several delays. Payments firms will need to apply the FCA's changes to the SCA regime and its Approach Document guidance ([read more](#)). Further changes to that guidance may be needed once the Court of Appeal reviews the *ipagoo* decision. [Read more](#)

Individual accountability

The FCA will discuss with the Treasury whether to extend the Senior Managers and Certification Regime to payment and e-money institutions ([read more](#)). The Treasury will also finalise its plans for applying SMCR to payment systems. [Read more](#)

AML

The FCA's temporary registration regime for cryptoasset businesses will end ([read more](#)). Legislation will be put forward to apply the so-called “travel rule” to cryptoexchanges and cryptocustodians, requiring them to share more information with cryptoasset transfers. Some lower risk payments firms will also be taken out of the scope of the Money Laundering Regulations. [Read more](#)

More support for fast-growing firms

In response to the Kalifa recommendation for a “scalebox”, the FCA will pilot a new scheme to provide more support for early and high-growth firms ([read more](#)). The PRA will publish draft rules for its “strong and simple” prudential framework for challenger banks. [Watch more](#)

More guidance on AI in financial services

Following the FCA and Alan Turing Institute's 2021 report on transparency in AI for financial services, and the conclusion of the AI Public-Private Forum, the FCA and Bank of England will provide firms with more regulatory guidance on best practice for adopting AI. [Read more](#)

Culture and conduct in financial services

Firms can expect the FCA to be “even more rigorous on upholding high standards – especially on governance, conflicts of interest and conduct, including considering diversity and inclusion as regulatory issues”. A joint consultation paper on diversity in financial services is expected in Q1 2022. [Read more](#)

Consumer duty

The FCA will finalise rules and guidance on its consumer duty ([read more](#)). The new requirement will apply to payment and e-money institutions ([read more](#)). Under the duty, firms will be required to do more to deliver good outcomes for retail clients. [Listen more](#)

Brexit

The regulators' standstill relief for Brexit-related changes to regulatory obligations will end. The final landing slot for firms in the temporary permissions regime will close on 31 December 2022. [Read more](#)

United Kingdom

2022 Continued

Future regulatory framework

The Treasury will release more detail on its blueprint on how it proposes financial services regulation should be made in the future ([read more](#)). In the longer term, retained EU legislation will be moved from the statutory books to the regulators' rulebooks. [Read more](#)

Broad regulatory cooperation on the digital economy

The CMA, Ofcom, ICO and the FCA have agreed to work more closely together in respect of digital regulation through the Digital Regulation Cooperation Forum. Going into 2022, if the DRCF can provide the regulators with a more coherent view of all of the issues faced by businesses and they can carry that understanding through into the regulatory relationship and decision-making process, there may be better communication, understanding and outcomes. [Read more](#)

Hill Review proposed changes to Listing Rules

Lord Hill's UK Listing Review has proposed regulatory reforms to encourage companies, including tech firms, to list in London. ([Read more](#)). Various of the key recommendations have specific impacts for tech. ([Learn more](#)). Most of the recommendations need to be taken forward by the FCA initially through a consultation phase. Others would require legislative change and might therefore be a longer-term goal.

Digital reforms in antitrust

While the EU aims to reach agreement on the Digital Markets Act next year – which will reshape how digital businesses operate in Europe and regulate online “gatekeepers”, such as Amazon and Facebook – in the UK, reforms are similarly expected in respect of firms with “Strategic Market Status”. [Read more](#)

Impacts from developments in anti-trust and foreign investment

Key developments in 2021 for the sector will include the following impacts in 2022: (1) increased competition scrutiny of tech/fintech M&A; (2) national security investment act – UK catching up; and (3) impacts for tech deals. [Learn more](#)

ESG in fintech

The FCA will run its second Green Fintech Challenge to support the development and testing of new financial products to aid the transition to a net zero economy. ([Read more](#)). While ESG is hugely important for all companies, there are some challenges and opportunities for tech and fintech companies to actively consider. [Learn more](#)

Building resilience to operational disruption

The FCA, Prudential Regulation Authority and Bank of England finalised their operational resilience regime ([listen more](#)). The rules will start to apply from 31 March 2022 to payment institutions, e-money institutions and challenger banks, among others ([read more](#)). The regulators said they would release a discussion paper on whether there should be a framework for designating third party service providers as “critical” and subjecting them to resilience standards and testing. [Read more](#)

Data protection post Brexit – diverging on use of data in AI

The UK Government released proposals to reform UK data protection laws. Unsurprisingly, it sought to deliver on its Brexit promises through deregulation, such as scrapping data protection officers, records of processing and data protection impact assessments. It is also proposing significant changes to better allow the use of data for innovation, particular for AI projects. A key uncertainty is whether it could even provoke the EU into revoking its adequacy finding for data transfers to the UK. [Read more](#)

Online harms

It looks like the UK's Online Safety Bill will be passed in 2022. In the meantime, platforms harms hosting user generated content should be turning their attention to their compliance programmes. [Read more](#)





United Kingdom

2021

Kalifa recommends more support for UK fintech

The UK Government promised to take forward several recommendations made by Ron Kalifa's Fintech Strategic Review ([read more](#)). The Kalifa Report suggested setting up a scalebox, creating a visa stream for fintechs and changes to listing requirements. [Read more](#)

UK sets out its approach on stablecoins and cryptoassets

The UK Government consulted on regulating stablecoins. It promised a "staged and proportionate approach" to bringing other types of cryptoasset into the scope of regulation ([Read more](#)). Building on this, the Bank of England also outlined its approach to regulating systemic stablecoin arrangements. [Read more](#).

Details on "Bitcoin"

The Bank of England added to previous discussion papers by releasing further materials on how it might issue a retail CBDC as a complement to cash. [Read more](#)

Ban on retail cryptoderivatives takes effect

The FCA's prohibition of retail cryptoderivatives started to apply. The ban covers the marketing, distribution and sale in or from the UK to all retail clients of derivatives and exchange-traded notes that reference certain types of regulated cryptoassets. [Read more](#)

The FCA bans Binance

The Financial Conduct Authority restricted the licence of Binance's UK regulated entity after it failed to answer questions fully about its group operations ([listen more](#)). At the same time the FCA issued a warning to remind consumers about the risks of investing in unregulated cryptoassets. [Read more](#)

E-money firms tell customers about safeguarding

The FCA told UK electronic money institutions they had to explain to customers how their money is protected in the event of the firm's insolvency ([listen more](#)). A special administration regime was also introduced for payment and e-money institutions. [Listen more](#)

New payments landscape takes shape

The Treasury responded to its Call for Evidence on the payments landscape in the UK, identifying four priority areas for further work: Faster Payments, Open Banking, cross-border payments, and the regulatory framework ([read more](#)). The Payment Systems Regulator changed the scope of the New Payments Architecture. [Read more](#)

Scams and online harms

The PSR sought feedback on authorised push payment scams and reviewed consumer protection in interbank payments ([listen more](#)). The FCA called for the scope of the Online Safety Bill to extend to online financial promotions. [Read more](#)

New foreign investment regime in the UK

The UK's National Security and Investment Act 2021 passed into law, radically overhauling the UK's approach to foreign investment screening. While the tech sector is squarely in focus, last minute changes were introduced with a view to minimising any chilling effect on UK investment. [Read more](#)

English law and smart contracts

Following a call for evidence in December 2020, the Law Commission advised the Government that the legal framework in England and Wales was capable of supporting the use of legally binding smart contracts without the need for statutory law reform, albeit that the common law may need to be developed incrementally in specific contexts. [Read more](#)



United States

2022

Biden appointees to shape digital assets policy

At least three Biden administration appointments are expected to have a meaningful impact on digital assets markets during 2022:

- > Gary Gensler was confirmed as the Chair of the SEC. While SEC Commissioners Hester Peirce and Elad Roisman, as well as Senator Pat Toomey, have continued to push for SEC rulemaking action with respect to digital assets ([read more](#)), the Gensler led SEC has not scheduled any proposals in the area ([read more](#)). In numerous 2021 speeches and other public comments, arguably indicating an appetite for future enforcement actions, Gensler warned that that several highly popular digital asset developments, including, among others, staking, non-fungible tokens (NFTs) and DeFi, may involve transactions in securities and that tokens sold in ICOs for fundraising purposes are likely to be securities.
- > Janet Yellen was confirmed as US Treasury Secretary. The Yellen led Treasury has made a strong impression on the digital assets industry by pushing for new tax reporting requirements on cryptocurrencies in the Biden infrastructure package.
- > As of the date of this publication, there is no nominee to head the Office of the Comptroller of the Currency (OCC), which Biden reportedly has referred to as a “critical” agency. While former OCC Chair, Brian Brooks, has been described widely as being a digital assets proponent, Michael Hsu (the acting OCC Chair following Brooks’ departure) has cautioned about digital assets’ effects on market stability. The next OCC Chair could play a powerful role in shaping crypto’s US trajectory.

Digital asset trading platforms in SEC Cross-Hairs

Numerous signs point to future SEC enforcement against digital asset trading platforms.

In August, the SEC announced an Order against Poloniex, finding that, from July 2017 through November 2019, Poloniex’s web-based trading platform facilitated the buying and selling of certain digital assets that were securities and that Poloniex met the definition of an “exchange” as defined by US securities laws. The SEC noted that Poloniex employees stated internally the desire, in order to increase market share, to be “aggressive” in making available for trading new digital assets and that, in 2018, Poloniex determined that it would continue to permit users to trade digital assets that Poloniex deemed to have “medium risk” of being securities.

SEC Chair Gensler has expressed, including in a December 2021 speech, that many digital asset trading platforms likely are listing tokens that are securities, perhaps signalling that the SEC plans to take aim at unregistered exchanges.

To-date, within the US, digital assets explicitly deemed securities arguably have had more limited liquidity, given the relative lack of legally compliant trading platforms (such as alternative trading systems (ATs)) for such tokens. 2022 could see an increase in ATs and delistings by unregistered trading platforms of digital assets deemed to be securities.

Standardization of crypto derivatives contracts

As part of the effort to bring banks and institutional investors into the market for digital assets, ISDA recently formed the ISDA Digital Asset Working Group. The goal of this group is to help standardize documentary standards for digital asset derivatives. Overall, this type of standardization process shows a maturation of the digital assets market and we expect that ISDA documentation will be developed during 2022.

UCC Amendments to reflect digital assets and virtual currencies

The Uniform Law Commission and the American Law Institute are working on certain UCC amendments, primarily in proposed Article 12, to address issues such as avoiding third-party property claims and ensuring that you can perfect a security interest in a digital asset. Focusing on commercial law in relation to digital assets, the proposed Article 12 contains provisions that deal with transactions in a subset of digital assets, referred to as “controllable electronic records.” [Read more](#)

United States

2022 Continued

NFTs and the rise of the Metaverse

Mainstream popularity of NFTs exploded in 2021, leading Collins Dictionary reportedly to name “NFT” as its 2021 Word of the Year, and the US comedy program Saturday Night Live to feature an NFT-focused skit.

Similarly, the concept of the metaverse, sometimes described as a shared space online marking the intersection of virtual, physical and augmented realities arguably has been identified as a key future frontier by gaming and other entities – perhaps demonstrated by the highly publicized name change of Facebook to Meta. At the same time, developments in blockchain interoperability, potentially enabling cross-blockchain transfers of data or assets, reportedly are being achieved, such as in connection with the Polkadot blockchain.

In addition to NFTs’ use in the metaverse (whether intended as collectibles or otherwise), the convergence of the gaming and digital asset spaces has led to the development of NFTs that may be earned and used in-game. Although SEC Chair Gensler has indicated that certain NFTs may be securities, and private plaintiffs have argued similarly, and some have questioned what enforceable intellectual property and other rights NFTs provide purchasers thereof, to-date.

In 2021, US regulators appeared not to have focused significant official public attention on NFTs, whether through rulemaking, guidance or enforcement. If NFTs remain in the spotlight and the subject of intense interest by many users, collectors, investors and even certain traditional operating companies, in 2022, certain US regulators (including, potentially the SEC and FinCEN) are likely to weigh in.

DOJ focuses on cryptocurrency

Increased DOJ enforcement actions are expected in the digital asset space, following DOJ’s October 2021 announcement of the creation of a National Cryptocurrency Enforcement Team (NCET), to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors. [Read more](#)

Individual states introducing data protection regimes

Virginia was the second state to enact comprehensive privacy legislation, following California’s lead with its Consumer Privacy Rights Act that followed a ballot measure to build on the California Consumer Privacy Act in November 2020. Notably, both the Virginia and California laws will come into effect at the same time in January 2023 ([read more](#)). Colorado has since become the third state to pass such a law, set to come into effect July 1, 2023, and more states could follow suit in 2022. [Learn more](#)





United States

2021

Stablecoins gain notoriety in Washington

As stablecoins continued to achieve mainstream popularity, whether serving as crypto on-ramps and off-ramps, providing the foundation for DeFi or otherwise, US regulators, legislators and others sounded the alarm concerning market stability.

Among other things, in a September speech, acting OCC Chairman, Michael Hsu, drew parallels from the current DeFi and crypto space to the 2008 financial crisis and warned that a run on large stablecoins (some of which reportedly are backed largely by relatively illiquid assets, such as commercial paper) or other events could cause widespread economic destabilization.

In addition to reported investigations into the investment practices underpinning certain well-known stablecoins, enforcement actions were brought against certain stablecoin issuers and their affiliates. In October, the CFTC ordered Tether to pay US\$41 million (over claims that Tether's USDT stablecoin was fully backed by US dollars).

In November, the President's Working Group on Financial Markets issued its highly-awaited Report on Stablecoins, highlighting that current stablecoin regulation is inconsistent and fragmented, and urging Congress to enact legislation to ensure that stablecoins are subject to a federal prudential framework, including requirements for issuers to be insured depository institutions and subjecting custodial wallet providers to oversight.

Although noting that "stablecoin arrangements and activities may implicate the jurisdiction of the SEC and/or CFTC," the report did not contain any new analysis for determining whether a stablecoin is a security, commodity and/or derivative. [Read more](#)

SEC approves first bitcoin futures ETFs

In October, the SEC allowed trading to commence for two exchange-traded funds (ETF) – which are required to register with the SEC under the US Investment Company Act of 1940 – that provide exposure to Bitcoin futures. Congressmen Tom Emmer and Darren Soto also urged the SEC to approve Bitcoin spot ETFs. [Read more](#)

DeFi's Rise, as Federal and State regulators take aim

So-called decentralized finance boomed in 2021, drawing parallels to the 2017 ICO craze. With summer 2021 widely nicknamed "DeFi Summer," DeFi's popularity also gave rise to regulatory attention. Whether in speeches given by SEC Chairman Gensler or SEC Commissioner Crenshaw's November "Statement of DeFi Risks, Regulations and Opportunities," or in SEC or state securities actions, regulators made clear that DeFi programs, including lending programs and interest-bearing tokens, may involve transactions in securities and highlighted the need for adequate disclosure and other investor protections.

Among other things, in August, the SEC announced its first enforcement action against Blockchain Credit Partners (which the SEC referred to as a "decentralized finance lender") and top executives thereof. Multiple state securities regulators brought cease-and-desist or other actions against popular DeFi players, including Delaware-based Celsius Network and New Jersey-based BlockFi, while press reported that the SEC was investigating BlockFi and its lending program. In September, Coinbase announced that it had received a Wells Notice from the SEC and that, as a result, it would be withdrawing its planned Lend program.

States start moving ahead with fintech, crypto legislation

In April 2021, Wyoming adopted legislation allowing the state to recognize decentralized autonomous organizations (DAOs) as limited liability companies, a key step in encouraging the formation of DAOs because the LLC structure protects members of the DAO from personal liability. [Read more](#)

In June 2021, Texas adopted legislation establishing a blockchain working group in the state, as well as a bill amending the state's Uniform Commercial Code to recognize cryptocurrencies under commercial law, which became effective in September 2021.

OFAC publishes sanctions guidance for U.S. virtual currency industry

As an increasing number of investors begin to buy and sell digital assets, OFAC reminded the digital asset space that it is subject to the same compliance obligations as more traditional industries. In October 2021, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued specific guidance regarding the application of U.S. sanctions requirements to the virtual currency industry. While this guidance does not break new ground or offer any surprises to experienced sanctions practitioners, it helpfully summarizes OFAC's expectations and how sanctions apply to the digital asset industry.

[Read more](#)

United States

2021 Continued

SEC makes its mark on cybersecurity

In 2021, the SEC brought several enforcement actions recently regarding defective cybersecurity disclosure and governance, highlighting that companies should already have in place a plan for addressing cyber disclosures and should address already known cybersecurity vulnerabilities.

[Read more](#)

DOJ recovers bitcoin ransom paid by Colonial Pipeline

In a first of its kind operation, the DOJ recovered the majority of a ransom payment that Colonial Pipeline paid to Russia-based hackers after a cyberattack caused the company to suspend its fuel pipeline operations last month. The DOJ seized 63.7 bitcoins, then valued at approximately \$2.3 million, after a seizure warrant was authorized by a federal district court. By reviewing the Bitcoin public ledger, the DOJ was able to track multiple transfers of bitcoin and identify that approximately 63.7 bitcoins, representing the proceeds of the victim's ransom payment, had been transferred to a specific address, for which the FBI had the "private key". [Read more](#)



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