CLIFFORD CHANCE

FINTECH IN 2020: FIVE TRENDS TO WATCH

— THOUGHT LEADERSHIP

JANUARY 2020

FINTECH IN 2020: FIVE TRENDS TO WATCH

Technology's transformation of financial services will rapidly continue over the next decade. Following the bold predictions we made last year, we predict five developments for fintech in 2020.

1

Artificial intelligence (AI) risk

The use of AI in financial services brings the potential for significant legal, ethical and reputational exposure. Global regulators are grappling with these risks and more than 60 sets of guidelines, reports and recommendations from governments, regulators and industry bodies were published in 2019. Tech giants including Microsoft, Alphabet and IBM have responded to consumer wariness by calling for imminent and effective AI regulation, which will impact all sectors.

What's next?

- 2020 will see an acceleration of legal and regulatory frameworks to address the use of AI across industries, with an increased emphasis on, among other things, the need for explainability and mitigation of algorithm bias.
  - In the EU, this means new AI-specific legislation, including proposed reforms of rules on safety, liability and data.
  - In the US, the White House Office of Science and Technology is promoting ten principles for government agencies developing AI regulations and proposals for a federal privacy law have also been tabled for discussion.
  - The Monetary Authority of Singapore has partnered with financial institutions to create a framework, called Veritas, for the responsible adoption of AI and Data Analytics. A report is expected in the second half of this year.
  - The UK's Financial Conduct Authority and the Bank of England have launched the Financial Services AI Public Private Forum to explore how guidance and regulation can support safe adoption.
- Regulators will shift towards enforcement action, to demonstrate the cost of failing to comply with AI law and regulation.
- Patent registries will focus on whether inventions created using AI can be granted patent protection. The more advanced systems become, the harder it is to explain how an invention is implemented – a key requirement for patentability.

For more, read our recent report: Artificial Intelligence Risk: What does 2020 hold?

2

Crypto evolution

Cryptoassets hit the headlines last year, in particular, Facebook's proposed stablecoin, Libra. We saw the launch of a new G7 working group on stablecoins and World Economic Forum Global Consortium for Digital Currency Governance; new crypto regulation and guidance including Financial Action Task Force AML standards, AMLD5 in the EU and national initiatives in Russia, France and South Korea; confirmation that cryptoassets can be property under English law and Italian law; US regulators and courts continuing to grapple with the threshold issue of whether a particular digital asset is a security; and some of the first crypto litigation. We also saw blockchain explorer software being used as both a regulatory enforcement and a compliance tool.

What's next?

- For Libra (as we predicted in June 2019) its H1 2020 target was optimistic. Regulators are still scrambling to formulate an appropriate response and its corporate backers are dwindling (Vodafone was the latest departure in January 2020). We still expect a phased implementation with greater testing over a much longer time-scale, and perhaps less ambitious plans.
- Regulatory and political scrutiny more broadly will continue. We will see more national legislative initiatives (see Japan's recently published draft implementing ordinances for its crypto token framework) alongside greater international supervisory cooperation – stablecoins continue to be G7 and Financial Stability Board (FSB) priorities.
- Central bank digital currencies (CBDCs) will be high on the agenda. A recent survey from the Bank for International Settlements (BIS) notes that certain banks are "imminently close" to issuing CBDC. Around 10% of the 66 central banks surveyed are likely to issue a CBDC for the general public in the short term.

For more, read our recent comprehensive report on the global regulation of stablecoins or our suite of Libra publications.

Big tech regulatory backlash

3

Big tech remains high on global regulators' agendas. The Vice President of the European Commission, Margrethe Vestager, says big tech should show how it helps consumers, rather than merely demonstrating that it does them no harm. The implications for the financial sector are expounded in the Financial Stability Board's December 2019 report on "BigTech in finance" which made clear that policymakers must consider the need for financial regulation and oversight.

What's next?

- Regulators globally will intensify their focus on the operational resilience of regulated firms and their key outsourcing dependencies on big tech firms, including reassessing the regulatory perimeter to address these dependencies and growing "shadow infrastructure".
- In several jurisdictions we will see new "big-tech" regulators. Competition and concerns around market dominance will be a key focus alongside systemic risk.
- We expect increased enforcement action against large data-heavy organisations. Antitrust, data and industry-specific or sectoral regulators (e.g. global financial or cybersecurity regulators) will act in parallel.

Africa in focus

4

In nearly all African jurisdictions, the regulatory framework for fintech products and services is either absent or in the early stages of development. There is no uniform pan-African regulatory framework for financial services. While this can complicate matters for entrants, it does mean that fintech regulatory changes can be quick, focused and tech-cognisant. And changes are coming. African regulators have also been collaborating internationally. The Global Financial Innovation Network (GFIN) which aims to establish global regulatory sandbox, has African members including Kenya, Mauritius, South Africa and the Seychelles. Regulators in Kenya and Mauritius signed fintech cooperation agreements with other international regulators last year.

What's next?

- We are likely to see the first iteration of an African central bank digital currency or CBDC. The central banks of Ghana and South Africa have both publicly stated their CBDC ambitions.
- Kenya is at the forefront of Africa's tech initiatives, although others are not far behind. It passed data protection laws aligned with the EU's GDPR in late 2019. Implementation and enforcement details are awaited.
- We'll also continue to see private-sector driven growth. Vodafone plans to expand its mobile payment service M-Pesa beyond the six African countries it currently covers, while other payment offerings such as TYME in South Africa are being rolled out cross-border.

For more, read our recent publication: Financial Regulation in Africa

Tensions over open data

5

We've seen a new approach to data post-GDPR. "Open Banking" gives account holders unprecedented access to their data: banks are required to share an account holder's data with third-party providers on request, e.g. to help customers monitor multiple accounts. Open finance sees these principles extended across a wider range of financial products. While the UK and EU have pioneered such initiatives, we've seen global regulators respond with similar programmes including Australia's "Consumer Data Right", Hong Kong's "Open API Framework", Singapore's "API strategy book" and Israel's proposed Open Banking standard. Established firms have accelerated their digital strategies in defence.

What's next?

- Open finance brings new risks and raises questions about the ethics of data usage and sharing, including the potential for increased fraud and anti-competitive conduct. Expect to see innovative fintechs providing e-wallet services initiate enforcement action against incumbent financial institutions that are perceived to be creating barriers to entry. Payments regulators will feel under increasing pressure to bring enforcement action.
- We will see enhanced data portability globally in 2020, including cross-sector portability outside banking. In the UK the Government has proposed extending the Open Banking blueprint to financial services, utilities, digital and telecommunication sectors.
- In the US, where data portability was introduced with effect from 1 January by the California Consumer Privacy Act, we expect the fraught relationship between aggregators and financial institutions to come to a head. With limited federal oversight, in a market where "screen-scraping" (the provision of bank log in details to aggregators by customers) is commonplace, enhanced security measures will be driven by financial institutions – JPMorgan Chase has announced that it is working to limit access by fintech firms to secure APIs (application programming interfaces).

For more, read our recent articles: Payments industry trends in a hyperconnected world and PSD2-innovation and GDPR-protection: a fintech balancing act: Consent.

C L I F F O R D

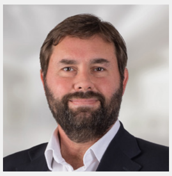
C H A N C E

CONTACTS

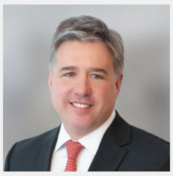
Laura Nixon
Knowledge Lawyer – Fintech
London
T: +44 20 7006 8385
E: laura.nixon@
cliffordchance.com

Chihiro Ashizawa
Counsel
Tokyo
T: +81 3 6632 6414
E: chihiro.ashizawa@
cliffordchance.com

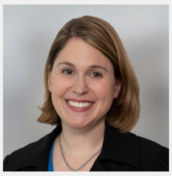
Peter Chapman
Partner
London
T: +44 20 7006 1896
E: peter.chapman@
cliffordchance.com



André Duminy
Partner
London
T: +44 20 7006 8121
E: andre.duminy@
cliffordchance.com



Steven Gatti
Partner
Washington DC
T: +1 202 912 5095
E: steven.gatti@
cliffordchance.com



Megan Gordon
Partner
Washington D.C
T: +1 202 912 5021
E: megan.gordon@
cliffordchance.com

Jack Hardman
Counsel
Dubai
T: +971 4503 2712
E: jack.hardman@
cliffordchance.com

Christian Hissnauer
Senior Associate
Frankfurt
T: +49 69 7199 3102
E: christian.hissnauer@
cliffordchance.com

Jonathan Kewley
Partner
London
T: +44 20 7006 3629
E: jonathan.kewley@
cliffordchance.com

Frédérick Lacroix
Partner
Paris
T: +33 1 4405 5241
E: frederick.lacroix@
cliffordchance.com

Ellen Lake
Senior Associate
London
T: +44 20 7006 8345
E: ellen.lake@
cliffordchance.com

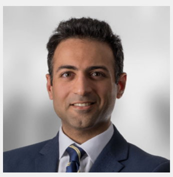
Paul Landless
Partner
Singapore
T: +65 6410 2235
E: paul.landless@
cliffordchance.com

Jennifer Mbaluto
Partner and Co-Head of Africa Group
London
T: +44 20 7006 2932
E: jennifer.mbaluto@
cliffordchance.com

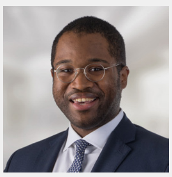
Rocky Mui
Partner
Hong Kong
T: +852 2826 3481
E: rocky.mui@
cliffordchance.com

Lena Ng
Partner
Singapore
T: +65 6410 2215
E: lena.ng@
cliffordchance.com

Jesse Overall
Associate
New York
T: +1 212 878 8289
E: jesse.overall@
cliffordchance.com



Haafiz Suleman
Senior Associate
London
T: +44 20 7006 4348
E: haafiz.suleman@
cliffordchance.com



Herbert Swaniker
Associate
Amsterdam
T: +44 20 7006 6215
E: herbert.swaniker@
cliffordchance.com

Donna Wacker
Partner
Hong Kong
T: +852 2826 3478
E: donna.wacker@
cliffordchance.com

Samantha Ward
Partner
London
T: +44 20 7006 8546
E: samantha.ward@
cliffordchance.com

TALKING TECH

Your one-stop shop for the latest cross sector, tech-focused, legal trends and developments that may affect your business

www.cliffordchance.com/talkingtech

@TalkingTech_CC

cliffordchancetechgroup

2001-000286