CLIFFORD CHANCE

FINTECH IN 2021: FIVE TRENDS TO WATCH

– THOUGHT LEADERSHIP

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The COVID-19 crisis has brought technology to the fore in the financial sector and beyond, with businesses seeing two or three years' progress compressed into two or three months.
What does this mean for fintech globally in 2021?

1

Evolving risks for AI and data use

Global regulators continue to publish guidance and recommendations, with AI-specific legislation already in effect in some jurisdictions and expected in the EU during 2021.

What's next?

- Data use by financial institutions and tech companies, including algorithmic decision-making, will continue to face scrutiny from regulators, affected individuals and privacy organisations. There will also be an increased antitrust enforcement focus on businesses using AI and data.
- 2021 will see several class actions and other claims relating to the use of personal data, with courts exploring class membership and measures of compensation. Claims arising from using or sharing data to tackle COVID-19 are also likely.
- Public trust and scrutiny have been identified by governments, regulators and industry bodies globally as a priority. Firms will need to focus on consumer impact and to use AI-based tools designed with a particular type of consumer in mind to avoid censure.

For more, watch our international expert panel discussions on **Explaining AI and algorithms** and Global data claims or read our briefings: **Data Collective Actions** and **Data Litigation: A Toolkit for Defendants**.

2

Payments

There was a renewed focus on the payments sector and its regulation in 2020. COVID-19's impact on spending habits and the Wirecard scandal were just two of the contributing factors.

What's next?

- Robust safeguarding arrangements help ensure that funds are returned to customers in the event of an insolvency of payment services firms. Payments firms' prudential risk management and safeguarding arrangements are a supervisory priority for 2021.
- The creation of new "Big Tech" regulators and dedicated regulatory regimes such as the EU's proposed Digital Markets Act, will impact the ability of key tech players to wield market power in rolling out new financial products.
- The "buy now, pay later" model popularised by firms like Klarna has grown through the pandemic. Expect to see increased M&A and listing activity, and more consumer guidance, regulatory enforcement and tighter regulation, including in the UK where the February 2021 **Woolard Review** has called for urgent regulatory action.

For more, watch our international expert panel discussion on **Fintech success in payments** or read our briefing: **Payments Trends 2021**.

3

Operational Resilience

Ensuring continuity of key business services remains a regulatory focus. Growing digitisation of customer experiences, greater automation and increased use of third-party providers all make firms susceptible to technology disruption events.

What's next?

- Regulators will increasingly formalise existing guidance into specific regulations. In the UK, the Financial Conduct Authority and the Prudential Regulation Authority are due to publish policy statements on proposed legislation requiring firms to map important business services and robustly test contingency arrangements. In Singapore, existing outsourcing guidance for banks will soon be formalised into legally-binding requirements.
- We expect an increase in enforcement action relating to operational disruptions. Regulators may seek to hold firms accountable for failures in their responses to COVID-19 challenges. The same tech disruptions (and regulator criticism) may give rise to civil claims.

- The European Commission unveiled its digital operational resilience proposal (DORA) in October 2020 to harmonise rules addressing ICT risk in finance. This will include the creation of an EU framework to oversee "critical" ICT third-party service providers, such as cloud computing, data analytics or software. Firms will need to start taking steps in 2021 to ensure compliance.

For more, read: **Exploring DORA**

Crypto and CBDC developments

4

Regulators have continued to work on bringing cryptoassets within the regulatory perimeter, including in the UAE, where Clifford Chance has supported the development of its comprehensive new cryptoassets regime. The rise of decentralised finance (DeFi), which aspires to create a global peer-to-peer alternative to traditional finance using blockchain technology, has seen purportedly unregulated crypto investment worth billions of dollars.

What's next?

- Further tightening of the AML regulatory requirements applicable to cryptoassets globally and a flurry of discussions around the EU's proposed Markets in Crypto-Assets Regulation (MiCA), the UK's consultation on its regulatory approach to cryptoassets and stablecoins and Hong Kong's proposal to introduce a licensing regime for virtual asset services providers, among others.
- More economies getting closer to wide-scale issuance of CBDCs. In January 2021, the Banque de France confirmed it has successfully piloted the use of a CBDC to settle monetary fund shares and the People's Bank of China's pilot programme for its CBDC (the digital Renminbi) has been extended to more cities including Beijing, following trials in Shenzhen and Suzhou. The US Federal Reserve has also acknowledged that it is actively investigating how distributed ledger technologies might be used to digitise the dollar.
- In the US, regulators are likely to closely examine DeFi platforms. We expect further US regulatory and enforcement activity against both US and non-US cryptoasset trading platforms. We'll also likely see further developments in the turf war for the regulation of virtual currency activities between US state and federal regulators.

For more, watch our international expert panel discussion on **CBDCs and Stablecoins** or read our briefings: **CBDCs and Stablecoins – how might they work in practice?** and **As DeFi Matures, US Financial Regulatory Questions Loom Large**.

Sustainable fintech

5

We have seen increasing focus on environmental, social and governance (ESG) issues across the financial sector. Regulatory developments, such as the European Commission's green taxonomy and stimulus plans, as well as private sector and consumer interest are all helping to drive change ahead of COP26 in November 2021. From the carbon footprint of Bitcoin, to the cultural and ethical issues raised by developing products utilising personal data or AI and the value that fintech can bring in terms of social inclusion, ESG considerations and challenges abound for fintech.

What's next?

- Greater focus on the intersection between ESG and fintech. This means improved opportunities for green or socially aware fintechs and firms being held to greater account on ESG issues. Diversity and inclusion will be key, with a move towards greater investment in fintech firms led by BAME and female founders.
- With increasing focus on governance, financial firms will need to develop documented procedures on the development, implementation and use of tech which may impact consumers or society at large. Taking AI, this might include ethics frameworks, explanations of the AI, approval processes and allocation of responsibility. First steps towards mandatory human rights due diligence mean fintech firms of all sizes will need to understand risks throughout their value chain and show they have processes in place to address them.
- President Biden's inauguration has brought ESG to near the top of the US agenda, which could mean particular focus on sustainable fintech issues. We expect continued focus by the Securities and Exchange Commission and other US regulators on "greenwashing" and other potentially misleading marketing practices.

For more, read our briefings **ESG: Legal Risk or Business Opportunity?** and **Can human rights due diligence help the tech sector?**

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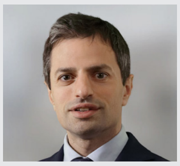

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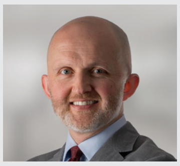

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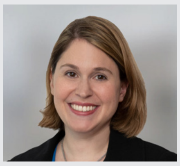

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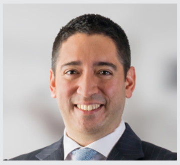

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