

**International
Comparative
Legal Guides**



Fintech

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glg Global Legal Group

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Zhiyi Ren



Lily Yin

1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

From the perspective of financial licensing/regulatory rules, the types of fintech businesses active in the People's Republic of China ("PRC") include mainly, among others:

- **Online payments:** e.g., the mobile payment services of Tencent and Alibaba.
- **Online lending:** e.g., the online microloan or consumer financing platforms of Ant Group.
- **Fintech for asset management:** e.g., the use of AI and big data in securities investments.
- **Fintech for traditional financial services:** e.g., the use of new technology in KYC due diligence by banking, insurance and securities institutions.

In 2023, the explosion of ChatGPT brought Artificial Intelligence Generated Content ("AIGC") into public awareness. Specifically, in the fintech sector, AIGC has been applied in financial information, product introduction, content and image generation, virtual client services, etc. With the continuous improvement of technology and its deeper integration with financial business, it is reasonable to believe that new changes in more segmented financial sectors will happen.

In addition to the above, in 2023, the regulators made the following notable changes:

- **Financial regulatory restructuring:** in accordance with the *Reform Plan for Party and State Institutions* (《党和国家机构改革方案》) issued by the Central Committee of the Communist Party of China and the State Council in March 2023, the financial regulatory structure has been further adjusted and improved. Among others, the National Financial Regulatory Administration ("NFRA") was established on the basis of the China Banking and Insurance Regulatory Commission ("CBIRC"), and is responsible for the supervision of all financial activities other than the securities sector. The China Securities Regulatory Commission ("CSRC") was adjusted from a public affair body to a government agency directly subordinate to the State Council (same as the NFRA).

- **Settlement of intensified rectification for tech giants:** in July 2023, regulators announced that the main serious problems with regard to the financial business of Ant Group, Tencent Group and other big platform enterprises have been rectified, and the regulatory focus was then adjusted to regular supervision. Along with the settlement of regulatory action this round, Ant Group and its subsidiaries were fined in total 7.12 billion yuan.
- **Issuance of the first regulatory document for AIGC:** in July 2023, the Cyberspace Administration of China ("CAC"), National Development and Reform Commission, Ministry of Education, Ministry of Science and Technology, Ministry of Industry and Information Technology, Ministry of Public Security, and National Radio and Television Administration jointly issued the *Interim Measures for the Administration of AIGC Services* (《生成式人工智能服务管理暂行办法》, "AIGC Measures"), which, as the first regulatory document for AIGC in PRC, stipulated basic rules related to, among others, its applicable scope, classified regulatory approach, responsibilities of service providers, security assessment and algorithms filing, offshore service providers and foreign investment. Generally, compared with its draft paper, regulators relaxed certain requirements in the official version.
- **Development of payment regulation:** in December 2023, the State Council issued the *Regulation on the Supervision and Administration of Non-Banking Payment Institutions* (《非银行支付机构监督管理条例》), which materially changed the regulatory logic of third-party payment business.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

PRC has generally prohibited cryptocurrency-related activities (trading, mining, etc.).

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Both equity financing and debt financing are generally available to new and growing businesses. Various forms of government funding are also available to government-favoured industries.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

Yes, various incentive schemes are available in PRC for investments in tech/fintech businesses or in small/medium-sized businesses broadly. In particular, major business hubs like Shanghai and Shenzhen have been keen to attract talent and investment to strengthen their local financial and technology industries by way of, e.g., low-/zero-interest loans, preferential tax treatments, subsidies, and government guidance funds (i.e., funds established with government money to guide private capital to invest in industries favoured by local governments).

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

Generally, the primary conditions are in relation to financial performance, such as making a certain minimum amount of profit in the past three years (Main Board). For qualified high-technology enterprises (e.g., enterprises in the fields of AI, big data, cloud calculation), such financial-related conditions may be relaxed or removed (STAR Market and GEM Board).

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

In 2023, there appeared to be no exits by founders of fintech businesses which had a significant impact on the PRC market. A relevant case is that on 28 December 2023, Guangdian Yuntong (002152.SZ), a company listed in Shenzhen Stock Exchange, announced that it completed the transaction of using 860 million yuan to acquire 42.16% equity of Zhongshu Zhihui, a fintech company which withdrew its IPO application in the STAR Market in 2022.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Generally, in PRC, fintech businesses *per se* are not subject to a regulatory system specifically designed for fintech. Rather, to the extent their business activities involve specific financial products or services, fintech businesses are regulated by the financial authorities in charge of such products or services. Depending on the regulatory rules issued by the in-charge regulators, fintech businesses may need to, e.g., obtain licences or lodge filings as appropriate.

The major authorities and the areas subject to their regulation, among others, include:

| | |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| People's Bank of China ("PBOC") | <ul style="list-style-type: none"> ■ Internet payment (by banking financial institutions and third-party payment institutions). |
| NFRA | <ul style="list-style-type: none"> ■ Online lending. ■ Internet insurance. |
| CSRC | <ul style="list-style-type: none"> ■ Internet fund sales. ■ Internet investment advisor. |

In terms of asset management business, the types of financial licences involved include mainly the investment advisory licence, the investment management licence, and the investment product sales licence. For example:

- With respect to investment advisory/management licences, the *Guiding Opinions on Regulating Asset Management Business of Financial Institutions* (《关于规范金融机构资产管理业务的指导意见》) require that conducting investment advisory businesses by making use of AI be subject to the investment advisory licensing requirements, and stipulate that non-financial institutions may not engage in asset management business in a disguised form by making use of AI.
- With respect to mutual fund investments, the pilot programme of fund investment advisory business has been launched under the CSRC-issued *Circular on Carrying Out the Pilot Work of Investment Advisory Business for Publicly Offered Securities Investment Funds* (《关于做好公开募集证券投资基金投资顾问业务试点工作的通知》, "Fund Investment Advisory Circular"). Entities that have been approved to provide fund investment advisory services under the Fund Investment Advisory Circular include, in addition to traditional fund management companies, securities companies and commercial banks, as well as fund sales institutions and specialised investment advisors set up by internet giants (e.g., Ant Investment Advisor).
- In June 2023, pending a final version, the draft paper of the *Regulations on the Administration of Investment Advisory Business for Publicly Offered Securities Investment Funds* (《公开募集证券投资基金投资顾问业务管理规定(征求意见稿)》) issued by the CSRC specify detailed rules to regulate investment advisory business.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Yes. The PBOC, CBIRC (now NFRA), CSRC and several other PRC regulators jointly issued the *Notice on Further Preventing and Handling the Risks in Virtual Currency Speculative Trading* (《关于进一步防范和处置虚拟货币交易炒作风险的通知》, "Crypto Ban Notice") in September 2021, which expressly provides that "business activities related to virtual currencies are illegal financial activities" and thus are fully banned in PRC.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

Yes, on the whole, financial regulators and policy-makers in PRC are receptive to fintech innovations, and the concept of a regulatory "sandbox" is mentioned from time to time in governmental documents promoting fintech innovations. For example:

- In February 2023, the PBOC, CBIRC (now NFRA), CSRC, SAFE and Guangdong Government jointly issued the *Opinions on Financial Support for Deepening Comprehensive Reform and Opening-Up of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone* (《关于金融支持前海深港现代服务业合作区全面深化改革开放的意见》), which expressly stipulated the following: "Support fintech development. Support the establishment of leading Shenzhen-Hong Kong fintech research centers or

laboratories in the Qianhai Cooperation Zone. Support the deepening implementation of innovative fintech regulatory tools in the Qianhai Cooperation Zone, strengthen the collaboration between such innovative fintech regulatory tools and the Hong Kong Monetary Authority's 'regulatory sandbox', and enhance the uniformity, professionalism and penetration of fintech regulation."

- Afterwards, in June 2023, the Shenzhen Government issued the *Action Plan for Implementing the Opinions on Financial Support for Deepening Comprehensive Reform and Opening-up of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone* (《贯彻落实金融支持前海深港现代服务业合作区全面深化改革开放意见的实施方案》) to implement the abovementioned document.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Whilst generally regulatory rules in PRC apply to onshore activities, they may potentially also apply to offshore businesses if their cross-border activities target domestic investors in PRC. If financial activities outside PRC disrupt the domestic market order or harm the legitimate rights and interests of domestic investors, in theory PRC regulators have the power to seek for their accountability under PRC law.

Such general principle has been emphasised and strengthened in recent years. For example:

- The AIGC Measures mentioned this principle in its Article 20 ("[i]f the provision of AIGC services from outside PRC to the onshore market does not comply with laws, administrative regulations, and the Measures, the national cyberspace and information department shall notify relevant authorities to take technical and other necessary disposal measures").
- In May 2023, as required by the rectification requirements from the CSRC to regulate cross-border securities business, Futu and Tiger announced that they removed their apps from the online application stores in PRC.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/ transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Yes. The primary legal basis in this respect is the *PRC Cyber Security Law* (《中华人民共和国网络安全法》, "CSL"), which came into effect in June 2017. The CSL imposes stringent requirements on, among other things, the collection and use of personal information by network operators. When collecting and using personal information, network operators must comply with the principles of legality, justification and necessity, disclose rules for such collection and use, clearly indicate the purposes, methods and scope of information collection and use, and obtain the consent of those from whom the information is collected.

Further, the *PRC Personal Information Protection Law* (《中华人民共和国个人信息保护法》, "PIPL"), which took effect on 1 November 2021, sticks to the general principle of local storage of personal information and sets out stringent requirements on transferring personal information offshore.

In February 2023, the CAC issued the *Measures for the Standard Contract for the Cross-border Transfer of Personal Information* (《个人信息出境标准合同办法》, "Standard Contract Measures") to regulate the provision of personal information by personal information processors to overseas recipients via the standard contract.

Further, in September 2023, the CAC issued the draft paper of the *Provisions on Regulating and Promoting Cross-border Data Transfer* (《规范和促进数据跨境流动规定(征求意见稿)》, "Draft CBDT Provisions"). Pending a final version, it appears that the regulator intends to relax, to some extent, the supervision of cross-border data transfer.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

In theory, yes. On 13 February 2020, the PBOC released the *Personal Financial Information Protection Technical Specification* (《个人金融信息保护技术规范》, "PBOC PFI Specification", JR/T 0171-2020), which stipulates that personal financial information of clients collected and produced by financial industry institutions in the process of providing financial products and services within PRC needs to be stored, processed and analysed within PRC. If it is indeed necessary to provide personal financial information to offshore institutions, a financial industry institution should, among others:

- obtain explicit consent from the personal financial information subjects (i.e., the clients);
- conduct security assessment on cross-border transfer of personal financial information in accordance with measures and standards provided by the State and relevant authorities in its industry; and
- require and supervise the offshore institution to fulfil the duties of personal financial information confidentiality, data deletion, and assistance in investigations.

That being said, as mentioned above, regulators may relax certain requirements for cross-border transfer of personal information.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Administrative sanctions may include, depending on the circumstances, warning, fines, ordering to make correction, confiscation of illegal gains, ordering to suspend relevant business or suspend operation for rectification, or revoking relevant business permit or business licence. If any behaviour constitutes a criminal act, it should be subject to criminal liability.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Yes. The aforesaid laws and regulations (i.e., the CSL, the PIPL, the Standard Contract Measures, the Draft CBDT Provisions, and the PBOC PFI Specification) generally apply to fintech businesses in PRC.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Under the *Measures for the Supervision and Administration of the Anti-money Laundering Work and the Work of Combating Financing*

of *Terrorism of Financial Institutions* (《金融机构反洗钱和反恐怖融资监督管理办法》) issued by the PBOC in April 2021, the PBOC expanded the applicable scope of AML and CFT obligations to entities such as internet microlending companies and consumption finance companies.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction (for example, AI)?

Other regulatory regimes include primarily the internal management of fintech by regulated financial institutions, and their engagement of outsourced fintech services. Each in-charge regulator may issue specific rules applicable to financial institutions under its supervision. For example, the major regulatory rules in this aspect include mainly the *Regulatory Measures for Information Technology Outsourcing Risks of Banking and Insurance Institutions* (《银行保险机构信息技术外包风险监管办法》) issued by the CBIRC (now the NFRA) in December 2021, and the *Administrative Measures for Information Technology of Securities and Fund Business Institutions* (《证券投资基金经营机构信息技术管理办法》) issued by the CSRC in December 2018.

For AI in particular, as mentioned above, the AIGC Measures generally apply to fintech businesses in PRC.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The legal framework for employment in PRC consists of primarily the *PRC Labour Law* (《中华人民共和国劳动法》), the *PRC Employment Contract Law* (《中华人民共和国劳动合同法》), and the *Regulation on Implementing the PRC Employment Contract Law* (《中华人民共和国劳动合同法实施条例》). Specific requirements and restrictions include, among others:

- generally, the employee has the right to terminate the employment contract by giving a 30-day prior notice, but a termination by the employer has to be based on grounds such as the employee's serious violation of the employer's policies, the employee being subject to criminal liabilities, and the employee being incompetent for the post and remaining incompetent after receiving training or being assigned to another post;
- even for mutual termination, the employer must make minimum statutory severance payments;
- where the employer fails to conclude a written employment contract with the employee for a period of more than one month but less than one year after the employee commences work, it must pay the employee twice his/her monthly salary from the second month of such period until the date a written employment contract is signed;
- the employer must enter into an open-ended employment contract with the employee upon specific circumstances, e.g., the employee has been employed by such employer for a consecutive period of 10 or more years; and
- to solve employment disputes, the parties must first file for an arbitration by the local labour-dispute arbitration commission, and, if one party is not satisfied with the arbitral award, it can then initiate a litigation before court.

5.2 What, if any, mandatory employment benefits must be provided to staff?

Mainly social insurance, statutory holidays, maternity leave, etc.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

Foreign employees need to apply for work permits issued by local governments. To obtain such permit, a foreigner must meet certain conditions, such as having the requisite professional skills and the corresponding work experience for the work.

We are not aware of special routes designed specifically for fintech talents to work in PRC. That being said, since major cities in PRC are promoting the fintech industry, normally the process of applying for the work permit for foreign fintech talents should be efficient.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Under the intellectual property (“IP”) legal framework in PRC, innovations and inventions are protected by various forms of IP rights, such as:

- copyright;
- patents on inventions, utility models and designs;
- trademarks; and
- trade secrets.

In respect of IP application/registration, the “first-to-file” principle applies. That is, generally the first qualified person to apply/register IP rights will be granted ownership. For inventions specifically, only one patent right shall be granted for the same invention, and, where two or more applicants have made their respective application for patent for the same invention, the patent rights shall be granted to the applicant who filed first. Further, for inventions made by employees:

- an invention made by a person in the performance of the tasks of its employer or made by it mainly by using the material and technical means of its employer is a service invention. For a service invention-creation, the right to apply for a patent belongs to the employer. After the application is approved, the employer shall be the patentee; and
- where the employer and the inventor have entered into a contract for an invention completed using the material and technical conditions of the employer which stipulates the ownership of the right to apply for a patent and of the patent right, such agreement shall prevail.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

The relevant PRC laws on IP ownership are in essence in line with international standards. Upon the granting of a patent right, in principle, no entity or individual can implement the patent without licensing from the patentee.

In practice, PRC has been making substantial efforts to implement and enforce its IP laws to enhance protection of innovations and inventions. Specialised IP courts have been established, where patentees can initiate civil litigation

proceedings to seek for, among others, damages from infringers, including punitive damages if the circumstances are serious. Infringers may even be subject to criminal liabilities where the case constitutes a criminal offence. Apart from civil litigation, patentees can also report to the competent authority to request for help on, e.g., sealing up or seizing the products proved to be counterfeit patent products.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Generally, PRC adopts the territoriality principle in respect of IP protection, and local IP registration in PRC is needed for the purpose of protecting and enforcing IP rights in PRC. That being said, PRC has been keen to promote international cooperation and certain protections are available under international treaties as appropriate.

PRC joined, among others, the Patent Cooperation Treaty in 1994 and the WIPO's Hague System for the International Registration of Industrial Designs in 2022. PRC law expressly provides that, among others, where an applicant, within 12 months from the date of the first-filed patent application for an

invention or utility model in a foreign country also files a patent application for the same invention or utility model in PRC, it may enjoy priority in accordance with: the agreement entered into between the foreign country and PRC; the international treaty participated by both the foreign country and PRC; or under the principle of mutual recognition of priority.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

Overall, PRC law allows the exploitation of IP rights by way of, e.g., transferring, licensing and pledging. For patent transferring and licensing, the parties shall enter into a written contract, and also go through registration formalities with the patent administrative department under the State Council. Such transfer shall be effective from the date of registration. For pledges where the proprietary rights consisted in IP rights, such as the right to exclusive use of registered trademarks or patents, are pledged, the interest to the pledge is created at the time when the pledge is duly registered.

In recent years, market participants have explored IP securitisation, such as supply chain financing and financing leasing.



Zhiyi Ren is a leading regulatory lawyer in China, specialising in regulatory matters, financial markets, fund products and M&A transactions in the financial sector. Since 2003, he has provided legal services to multinational financial/asset management companies in China, covering such areas as entity establishment, products, compliance, regulatory investigations, crisis management and cross-border transactions.

Since the new round of opening up of China's financial sector in 2018, Zhiyi has assisted world-class financial institutions/assets managers in the setting up of the ground-breaking first batch of foreign-controlled financial institutions in PRC, including a securities firm, fund management company, future firm, PFM, wealth management company, NPL WFOE, debt QFLP, bank clearing/payment company, fintech platform, private bank, QFII, securities custody service, insurance broker, etc. Zhiyi has maintained good working relationships with financial regulators and gained vast experience on the effective implementation of the relevant regulatory provisions, in a way that enforces the supervisory and internal control requirements in a reasonable and practical manner. Zhiyi is familiar with local authorities such as those of Shanghai, Beijing, Shenzhen, Guangzhou, Tianjin and Hainan, and has helped clients obtain the available benefits/incentives.

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Lily is also an active fund lawyer, especially in the LP investment and LP interest secondary market transaction areas. With her in-depth knowledge of the Chinese regulatory environment and expertise in the assets management areas, she is uniquely positioned in the market and has been frequently consulted for both daily regulatory advice and complex deal structuring advice.

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- Funding For Fintech
- Fintech Regulation
- Other Regulatory Regimes / Non-Financial Regulation
- Accessing Talent
- Technology