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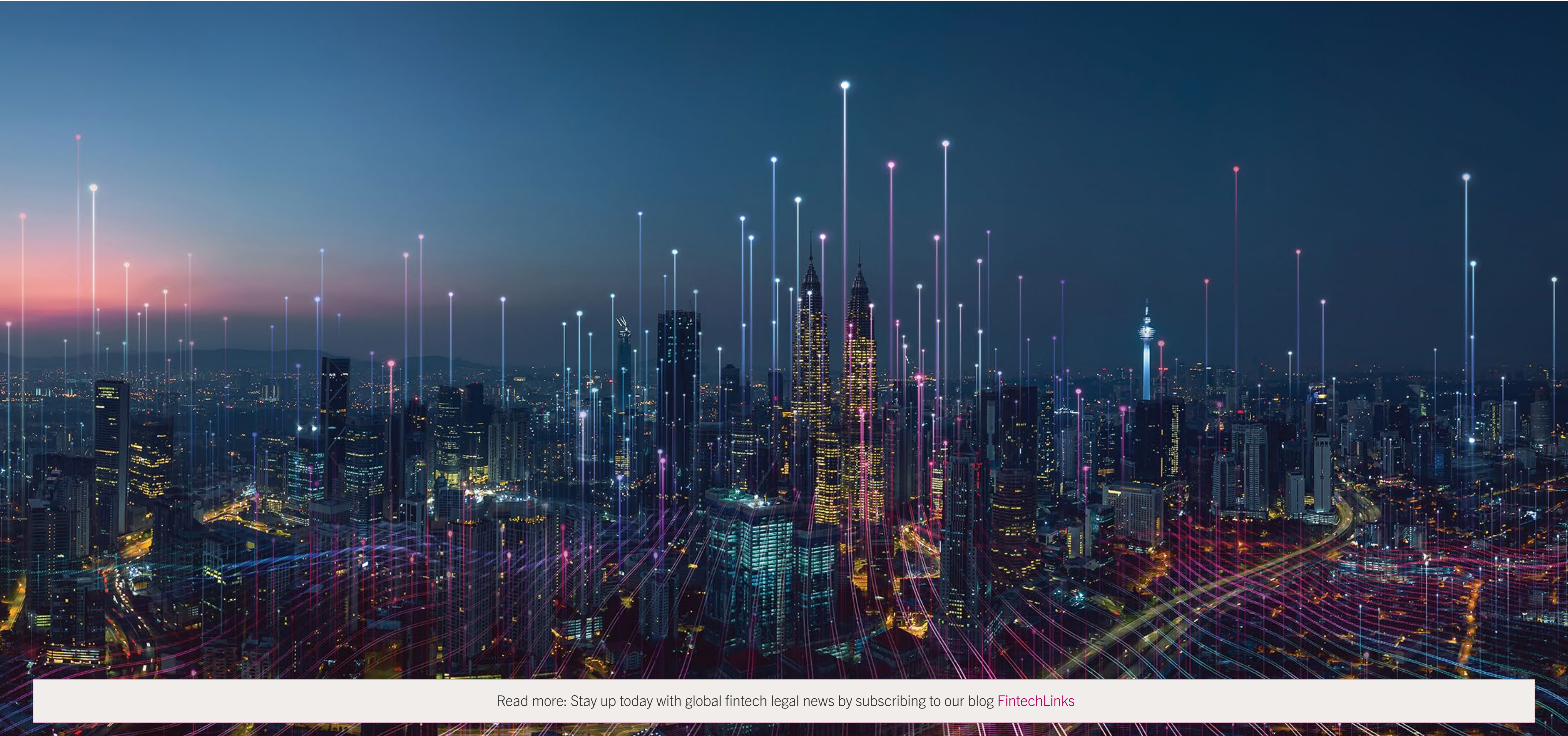
Fintech Legal Outlook 2023

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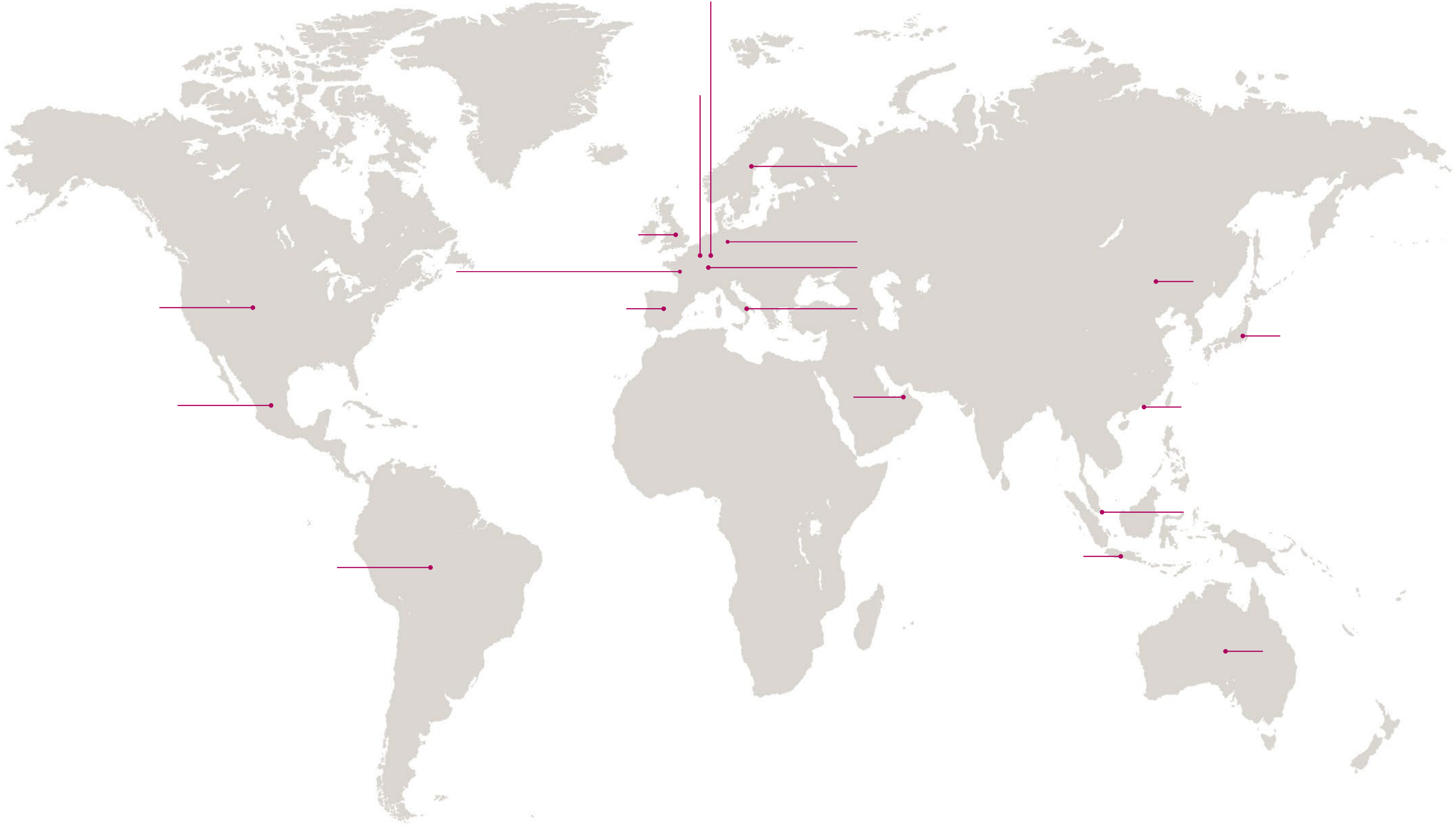
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Global Fintech Outlook

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European Union

The European Commission is on target to meet a number of the objectives it set in its 2020 Digital Finance Strategy and European Strategy for Data. A number of landmark pieces of legislation it proposed have been adopted and should start to take effect in 2023. While many market participants strongly welcome the legal certainty this will bring, there remain concerns that the regulatory burden will stifle innovation. A notable undercurrent is the EU’s “strategic autonomy” agenda: seeking to reduce exposure to foreign players while promoting homegrown solutions. This has led to strong political momentum behind issuing the digital euro and sweeping regulatory measures with broad extra-territorial effect.

A comprehensive regulatory framework for cryptoassets and stablecoins

The EU’s Markets in Cryptoassets Regulation (MiCAR) represents the most comprehensive and far-reaching regulatory frameworks for cryptoassets to date. It will regulate a broad range of assets and activities, includes regimes for issuance, services, market abuse and certain material acquisitions and will be supported by an enhanced anti-money laundering framework. It is likely to have a significant impact beyond the EU, for example through new caps on foreign-currency denominated stablecoins and requirements for service providers to have their place of effective management in the EU. [Read more](#)

MiCAR has now been agreed and is expected to enter into force in early 2023. Certain frameworks, notably those applicable to stablecoin issuers, will begin to apply after 12 months, while other provisions will take full effect after 18 months.

Facilitating experimentation with digital security infrastructure

Meanwhile, the EU has finalised its pilot regime for market infrastructures based on distributed ledger technology (DLT Pilot Regime), with applications for eligible firms open from March 2023.

Broadly, the idea is to facilitate the development of secondary market infrastructure for digital securities (including both “tokenised” securities and digitally native securities) through a regulatory sandbox for DLT Pilot Regime based trading and/or settlement. This should help inform EU regulators as to what (if any) changes to the regulatory framework would be beneficial. [Read more](#)

Regulatory support for a multitude of payment options

The EU is taking a multi-faceted approach towards payments, seeking to support a range of options.

Notably, the Commission has proposed legislation designed to maximise the potential of the Eurosystem’s instant payment settlement system (enabling direct account-to-account payments outside the card networks). This would require all payment service providers that provide credit transfers in euro to offer to send and receive instant payments in euro, reducing reliance on foreign players and supporting homegrown pan-European payment solutions.

Strong momentum is building behind the digital euro project, partly driven by a political desire to promote the international role of the euro and bolster strategic autonomy. Draft legislation to pave the way for a digital euro is expected in early 2023. The precise design features remain to be seen, including whether the digital euro will facilitate machine-to-machine payments and programmability.

The Commission is expected to propose legislative changes to the existing payments regime by early 2023. It is considering a wide range of proposals, including to harmonise the regulation applicable to payment institutions and e-money institutions and to clarify the existing framework.

Regulating data and artificial intelligence

The EU is currently pushing through a transformational digital regulation package including the Digital Services Act, the Data Governance Act and the second Directive on the Security of Network and Information Systems. These developments go beyond data protection and cyber security and present a step-change in the compliance challenges for those operating in the EU. [Read more](#)

The EU institutions are due also to start negotiations on the cross-sectoral AI Act ([read more](#)) and AI Liability Directive ([read more](#)) in spring 2023. Under the draft AI Act, AI used to assess an individual’s creditworthiness or credit score would be deemed high risk, triggering a significant compliance burden. Those using high risk AI systems would need to have specific risk and quality management measures in place and ensure human oversight by suitably trained individuals.

Operational resilience

Over 20,000 entities in the EU will need to get ready to implement the Digital Operational Resilience Act (DORA) once it starts to apply in late 2024. The regulation aims to harmonise and raise the resilience standards across the EU throughout the financial services industry ([learn more](#)). The EU’s oversight framework for electronic payments (PISA) will also bring unregulated tech providers into regulation.

Latin America

During 2022, Argentina has continued to be a fintech lighthouse for the LatAm region, with many developers of virtual payments and cryptocurrency businesses, and extended public use of all such businesses' products and services. This has had its drawbacks in the continued: growth of cybercrime and fraudulent schemes with cryptoassets.

In Chile, several fintech enterprises have consolidated and expanded their operations locally and abroad, while also gaining much-awaited recognition from the traditional financial sector and the general public.

Peru has faced a challenging regulatory environment where no specific bill has been passed to regulate digital financial services and companies rely on the regulatory framework established by the Peruvian General Banking Act and Central Bank regulations.

Latin America's rule-makers have adopted different approaches to regulate the fintech sector:

Argentina

Argentinian rule-makers have not fully aligned with the growth in fintech and have created some regulations that strongly challenge the scene. Among these regulations, the Argentine Central Bank:

- > Decided that the mandatory banking reserve financial institutions maintain regarding the deposits of payment service providers offering payment accounts for their clients' funds should be 100% (this regulation was modified thereafter to partially integrate a reserve requirement with specific Argentine Treasury Bonds, thus relieving some pressure).

- > Stated that payment service providers must abide by the regulations applicable to financial institutions re issues involving financial users' protection.
- > Prohibited banks from carrying out or facilitating for their clients the carrying out of transactions with cryptoassets (a measure taken after two banks launched a "cryptoassets" module as an investment product).

More positively, the Argentine Securities and Exchange Commission (CNV) launched the Innovation and Financial Inclusion Hub, as well as the FinTech Roundtable Working Groups. The Hub was thought of as a public-private collaboration channel promoting and encouraging innovative projects related to capital markets and intended to operate under the CNV's regulatory framework.

In 2023, it is expected in Argentina that the CNV will pass a regulatory sandbox and a regulation on advertisements made by virtual asset service providers. In addition, regulations regarding money laundering can be expected to impact the crypto sector in 2023. A draft bill already in the Argentine Congress seeks to bring "virtual assets service providers" into the scope of AML regulations. Uncertainty can be expected from both the legal and economic perspectives.

Chile

In Chile, legislative efforts have been approved in Congress and by the executive branch. The Chilean Congress has approved the so-called Fintech Bill, which is a wide-scoped legal reform that will encompass many Fintech activities. The Bill is in its final stages before being enacted, but many relevant aspects have been left for implementation by the Financial Market Commission.

Economic and legal uncertainty is also expected in 2023. The first part of the year will be marked by public consultation on the implementation rules of the Fintech Bill and (most likely) of data protection reforms. These are important steps that may push forward the fintech environment in Chile or hinder its development, both for national and international actors interested in entering the market or broadening their operations.

Peru

In Peru, the government, as part of the authority delegated by the legislative branch, has introduced several modifications to the Peruvian General Banking Act, including provisions intended to specifically allow the creation and operation of fully digital banks and other financial entities in Peru. In addition, the Peruvian Central Bank issued regulations to establish mandatory interoperability between the two most relevant digital wallets operating in Peru, to improve the payment system's market efficiency and tackle connectivity barriers and subsequently incorporate new players.

In 2023 there is no clear outlook on further regulatory measures to promote the fintech industry. Future regulatory efforts to further promote the fintech industry should concentrate on the following areas: (1) improving the interoperability of the payment and settlement systems, (2) promoting effective competition in the provision of payment services and encouraging innovation in that industry, (3) regulating open banking services to promote financial inclusion, (4) establishing clear rules related to cross-border digital financial services, and (5) promoting friendly and secure integration of crypto-based products and services with the traditional financial system.

Many thanks to our colleagues who assisted with the Latin America section, Juan M. Diehl (Marval O'Farrell, Mairal), Matías Langevin (Honorato Delaveau), Ignacio Araya (Honorato Delaveau), Fernanda Aillach (Honorato Delaveau), José Cúneo (Payet, Rey, Cauvi, Pérez Abogados) and Rafael Ortiz (Payet, Rey, Cauvi, Pérez Abogados).



Australia

Australia continues to punch above its weight class as a fintech hub in the Asia-Pacific region. The Government is exploring the introduction of a series of critical reforms across the fintech landscape. Despite global market headwinds, we are continuing to see strong domestic private capital interest in the fintech space that we expect to continue into 2023.

Fintech investments and funding

Financial institutions continue to rely on digital transformation strategies to fuel growth, efficiency, sustainability and to bolster compliance agendas. As incumbents increasingly look to strategic partnerships with fintech disruptors to execute on these strategies, we expect to see continued investment activity in the fintech space into 2023.

Cryptoasset regulation

The new Australian Government has announced that it will prioritise a token mapping exercise to understand the cryptoasset landscape and inform the design of a future regulatory regime. A consultation paper on token mapping is expected to be released in the near future, although no specific timeframe has been provided.

The Australian Government remains supportive of a licensing framework, custody obligations for third party custodians of cryptoassets and additional consumer protections. This support is likely to be hardened by the recent high profile failures of various cryptocurrency businesses.

Central bank digital currency pilot

The Reserve Bank of Australia will, together with the Digital Finance Cooperative Research Centre, conduct a central bank digital currency (CBDC) pilot project to explore

wholesale and retail use cases for an Australian dollar CBDC. The pilot will run from January to April 2023, with a report of findings expected to be published in mid-2023.

Buy Now Pay Later regulation

The government has announced its intention to regulate buy now, pay later (BNPL) products in a similar way to other consumer credit products and, in November 2022, published a [consultation paper](#) seeking public feedback on the following regulatory options:

- > strengthening (and potentially mandating) the existing self-regulatory industry code and requiring BNPL providers to conduct limited affordability tests;
- > requiring BNPL providers to hold an Australian Credit Licence but imposing reduced compliance (including affordability assessment) obligations compared to traditional credit providers; and
- > regulating BNPL in the same way as other consumer credit, including a need for providers to hold an Australian Credit Licence and comply with responsible lending obligations.

Whichever option the Australian Government proceeds to implement, BNPL providers will face more burdensome regulatory obligations than currently apply. All options have the potential to increase friction in the customer acquisition process and reduce the growth of BNPL credit, but also to provide opportunities for BNPL providers to gain a competitive advantage by using fintech solutions to discharge these new obligations at lower cost than their rivals.

Data and privacy

A recent comprehensive Privacy Act review has led to the [introduction of a Bill](#) into Parliament which, if passed, will substantially increase penalties for non-compliance

and provide the privacy regulator with enhanced information gathering powers. The Bill also considers introducing [extraterritorial application](#) for offshore entities handling Australian’s data. Further privacy reform recommendations made by the review are also likely to be rolled out in the near future, likely leading to a more prescriptive regulatory regime.

The Treasury also recently released a consultation paper relating to the [introduction of action initiation](#) into the Consumer Data Right (CDR). Action initiation, often referred to as ‘write access’, will provide consumers with the power to instruct accredited CDR organisations, often Fintechs, to work with incumbent banks and other large data holders to initiate actions on the consumer’s behalf (for example, opening an account or managing funds).

Cyber and operational resilience

The Australian Prudential Regulation Authority’s (APRA) [recent release](#) of a new draft prudential standard, CPS 230, will apply to APRA-regulated entities (for example, banks, insurance and superannuation companies) from 1 January 2024. The current draft consolidates significant new requirements in relation to service provider risk management that are likely to have important flow-on effects for fintechs supplying services to APRA-regulated entities.

Similarly, the [recent expansion](#) of the Security of Critical Infrastructure Act 2018 (Cth) introduces increased cyber security requirements upon certain service providers to critical financial services and markets assets, which may include Fintechs. Additionally, the Australian Securities and Investments Commission’s [recent successful proceedings](#) against *RI Advice Group Pty Ltd* has sent a clear warning that companies must closely look at their cybersecurity risk management practices and obligations.



Belgium

At sector level, innovation in payments is prevalent in the Belgian market. In 2022, Revolut activated its Lithuanian banking licence to start offering full-fledged banking services in Belgium. Dutch “neobank” bunq acquired Tricount, a Belgian app for group expenses, to combine their service offerings. Going into 2023, Belgians continue to embrace day-to-day fintech innovations with e.g. contactless payments now accounting for more than half of all in-store card payments.

Investments in a broadened product offering

Despite a generally more cautious approach in the technology sector, Belgian investments in fintech companies continue to thrive, and Belgian Fintechs are still attracting new investments.

One key shift is in funding which has become aimed at products that do not necessarily target end-consumers. For instance, in line with its vision to build “the digital supermarket of the future”, the Belgian fund Motive Partners is investing in platforms like InvestCloud, FNZ and CAIS, which provide a range of tools to wealth managers and other financial advisors.

This trend also applies to Belgian start-ups attracting new investments. One example is Oper, an Antwerp-based software developer, which enables processing mortgage loans in a fully digital way. In 2023, we are likely to see even more diversity in fintech ventures, leaving behind the times when payments and cryptoasset-related services predominantly sparked investor appetite.

Fintech regulatory developments

Unlike 2021, which marked the introduction of a legal framework recognising the use of DLT in securities holding and settlement, there were relatively limited fintech regulatory developments in Belgium in 2022. One noteworthy exception is the implementation of the EU Anti-

Money Laundering Directive 5’s prudential requirements for providers of cryptocurrency exchanges and wallets. These entities, referred to as Virtual Asset Service Providers (VASPs), are now required to obtain a registration and comply with a number of conditions relating to the prevention of money laundering and terrorist financing.

VASPs are subject to supervision by the Belgian FSMA and third country VASPs must establish a local entity if they wish to offer their services in Belgium. Crypto-to-crypto exchanges are out of scope. The FSMA has provisionally approved two registrations for crypto-exchange services and one for wallet custody services.

Asset protection in the wake of exchange meltdowns

The collapse of FTX, one of the world’s largest crypto exchanges, has sparked increased consideration for safety and governance in fintech. This is not a new concern – for instance, the European Central Bank previously warned against financial institutions’ exposure to the crypto ecosystem, among others due to the absence of mandatory “shock absorbers” providing additional liquidity in a stress scenario.

Recent developments demonstrated that these risks equally apply to consumers and sophisticated investors. Companies committed to protecting investors’ cryptoassets are gaining popularity. For instance, NGRIVE, a Belgian decentralised (“cold”) wallet service backed by Binance, allows users to hold their private key and to sign transactions with a fully offline device.

Similar products are likely to gain traction in 2023, while “hot” wallet providers may continue to attract scrutiny. It remains to be seen whether MiCAR will reverse this trend and restore trust in “centralised” crypto service providers like on-chain exchanges.

Smart contracts under the new Belgian Civil Code

Smart contracts are becoming increasingly prevalent in the data-driven economy and in digital finance. In some cases, a smart contract may constitute a legally binding agreement governed by Belgian law.

Unsurprisingly, the 200-year-old Belgian Civil Code does not distinguish between smart contract and “traditional” agreements – it applies the same rules and general principles to all. The Code is currently being reformed to meet the needs of modern society by codifying and modernising the fundamental rules of contract law. Some believe that, in that spirit, new rules should be introduced governing the formation and interpretation of smart contracts, including rules dictating the precedence between the code of a smart contract and the natural language of its underlying agreement.

However, the Belgian legislator decided against this approach as the proposed (new) Book 5, which governs contracts and comes into force in 2023, does not specifically regulate smart contracts. This may still change in the future, depending on how smart contracts continue to develop under “traditional” Belgian contract law. For now when entering into a smart contract, parties must continue to bear in mind the traditional civil law rules as to constitution, interpretation and enforcement of contractual obligations.



France

French public authorities and regulators have a strong ambition to help fintech companies become a permanent part of the financial landscape. They are also facilitating the entry of new players by publishing guidance and offering dedicated fintech experts to support new project developers. As these efforts contribute to increasing the attractiveness of the French fintech ecosystem we expect this to lead to greater investment and development in 2023.

Regulation for digital assets

Innovation is a strategic priority for the financial regulator, the AMF (*“Autorité des marchés financiers”*) which is fully involved in fintech topics and has been supporting players in the transformation of the financial sector. France has been a forerunner in devising a regulatory framework for digital assets, having introduced in 2019 a national regime for PSAN (digital asset service providers). The French regime is very close to the legal regime provided by the EU’s recently adopted MiCAR.

The AMF is ready to implement the transitional EU regulatory framework to test the use of distributed ledger technologies (DLTs) in market infrastructures in a pilot regime. It has also planned to provide support to stakeholders and make regulatory adjustments to implement the EU’s new MiCAR regime.

A growing DeFi market

The growing Decentralised Finance (DeFi) market is also a focus of attention in France. Ongoing discussions amongst the key market stakeholders are taking place (including with the regulators) around DeFi applications offering alternative financing systems based on public blockchain technology.

In line with the European Commission’s pilot project to develop, deploy and test a technological solution for embedded supervision of DeFi activity, French public

authorities are advocating a balanced regulatory approach, to *“foster innovation and the progress DeFi brings, while preserving stability and regulations”* around four principles: security, compliance, responsibility and accessibility.

Fintech Charter for start-ups

The ACPR (*“Autorité de controle prudentiel et de résolution”*) has drawn up a [“Fintech Charter”](#) to facilitate and improve transparency of the approval process for financial sector start-ups, describing the authorisation process and outlining the commitments and expectations of the supervisory authority.

Promotion of the EU Digital Finance Platform and open finance

The ACPR is promoting [the EU Digital Finance Platform](#), a new platform designed to strengthen the dialogue between innovative Fintechs and the European regulators, including the ACPR. This platform aims to consolidate and strengthen access to digital financial services throughout the EU’s Single Market. This is expected to foster innovation in finance and increase the potential for more efficient financial products and services.

French public authorities also support the creation of a regulatory framework for open finance and data sharing in the financial sector and have planned to welcome innovative initiatives across sectors.

Operational resilience a compliance imperative

The ACPR and the AMF consider cyber risk to be one of the most significant threats to the fintech ecosystem. As part of their work in regulating fintech market players in France, both authorities have identified several areas of

vulnerabilities, notably regarding cyber risk governance and management and monitoring of cyber security systems.

The ACPR considers that while the EU’s DORA will significantly strengthen regulatory requirements in digital finance, the current regulatory framework already provides many requirements that are not always adhered to. Both regulators urge market stakeholders to reinforce their cybersecurity systems to comply with the current legal framework ahead of the adoption of DORA.

Cloud computing and data protection/security

The ACPR, the AMF and the French Data Protection Authority (CNIL) have expressed concerns regarding the increasing use of cloud computing services provided by non-European (in particular U.S.) companies, increasing the risk of non-compliance with data protection regulations and loss of control over data security. Since cloud services was a priority area for the CNIL for 2022, it is likely to publish, in early 2023, views on the measures to be taken by the users of cloud services providers to mitigate such risks.

Regulatory intervention

Key regulators have stressed the need to strengthen the security of the fintech market, especially services provided by DASPs established outside France. The AMF has recently withdrawn BYKEP SAS’s registration for the buying, selling and custody of digital assets after an on-site inspection revealed serious failures in KYC, scrutiny of high-risk transactions and asset-freezing measures. This decision indicates the AMF’s willingness to exercise its supervisory powers over fintech players and suggests that we can expect increased regulatory intervention in 2023.



Germany

2022 was a mixed year for fintech in Germany. The “Crypto Winter” and a stark increase in funding requirements have led to a general cooling of the fintech market including a first round of insolvencies and across-the-board layoffs. At the same time, opportunities for Fintechs who get their fundamentals right remain strong. We are starting to see M&A driven consolidation and the outlook of upcoming German and EU digital finance and crypto-specific legislation specific brighten the outlook for 2023.

Going into 2023, Fintechs seem to be considering more complex business models and banks seem to more fully embrace the technological and digital changes ahead. Depending on the overall economic outlook, we expect those positive trends to pick up further steam in 2023 and for ESG to play a bigger role, in investor expectations as well as in fintech products and services.

Digitalisation of financial infrastructure

Given the sound regulatory framework in Germany, we expect that established financial markets players will increasingly push towards a more digital financial infrastructure, giving Fintechs more of a run for their money. However, while the days of plenty in respect of “low hanging fruits” may be ending, opportunities remain plentiful for financial technology and those able to harvest it.

Crypto/digital assets, DeFi and their regulation

While the Crypto Winter cools the crypto frenzy, market players are keeping a steady head. Overall, investment in DLT and crypto capabilities seems to remain strong with projects becoming more complex and, due to the sound regulatory framework, more established institutions are working on their crypto and DLT based offering.

Further EU law legislation, especially MiCAR and the DLT Pilot Regime are viewed with great anticipation. The introduction of electronic bearer bonds and crypto funds have opened the door for DLT based securities. The prospect of DLT based electronic shares (as announced by the German government) may foster this even more, hopefully providing a major missing piece of the puzzle: a relevant secondary market for electronic securities.

Fintech funding, digital lending and payments

In light of the current macroeconomic environment, increased interest rates and the stable, if not increasing funding needs, of fintech businesses, in 2023 we expect to see a continuation of market consolidation and funding shifting even more from venture capital and straight debt to structured financings secured on the physical or financial assets of the relevant fintech.

In addition, certain legislative proposals at the EU level – e.g. enhanced consumer protection – may cause the industry some compliance headaches whilst others – e.g. regarding instant payments – may give German lending platforms and payment fintech a boost.

Anti-trust and foreign investment controls in the digital economy

We expect that regulatory scrutiny by antitrust regulators of fintech M&A will continue to increase in 2023. The German Federal Cartel Office, alongside the European Commission, is at the forefront of finding novel ways to claim jurisdiction over fintech deals. Also, learning from experience in other financial and digital markets, novel theories of harm are being pursued when assessing platform and data aspects in fintech deals and regulators enhance their toolkit to be able to intervene in such fast-paced markets.

In addition, increasing foreign investment scrutiny, which is very much *en vogue* across the globe (and typically less established and predictable than antitrust regimes) – together with the EU’s foreign subsidies regulation, which is expected to enter into force in 2023 - will make the regulatory landscape of the digital economy more complex than ever.

Cyber and operational resilience

One of the key focus areas of BaFin’s supervision of regulated German firms is cyber security and sound IT governance. This is especially apparent in the licence application procedures for crypto services. The EU’s DORA regulation on operational resilience will further enhance this, requiring Fintechs and regulated players alike to start with their compliance assessment and implementation early on.

Regulatory enforcement and disputes in fintech

BaFin’s has lost its patience with non-compliant Fintechs. Its new motto seems to be increasingly “comply or perish”, making sound governance structures and regulatory compliance not a cost factor dragging down growth but an early necessity.

The consolidation of fintech markets and first insolvencies might make legal disputes more likely, especially if assets are lost. Again, good compliance frameworks become ever more important.



Hong Kong SAR

The Hong Kong Monetary Authority (HKMA) continues to champion fintech adoption with initiatives such as ‘Fintech 2025’ ([read more](#)) and the Commercial Data Interchange, which enables commercial data to be shared more easily between banks and data providers. The virtual asset sector also got a huge boost at the end of 2022 with the government’s policy statement setting out their stance and approach towards developing the VA sector and ecosystem in Hong Kong. The government has recognised that VA are ‘here to stay’ and provided clear future backing to promote the sustainable and responsible development of the VA sector through its stated intent to ‘calibrate [the] legal and regulatory regime’.

The new virtual assets service providers licensing regime

In 2023, there will be a new regime to license VASPs which requires VA exchanges trading any kind of VA to obtain a licence from the SFC, and introduces AML and investor protection requirements. There will be a transition period, and exchanges already operating in Hong Kong will have until the end of 2023 to submit a licence application. [Read more](#)

We are waiting for the SFC consultation on the regime details which will seek feedback on whether retail investors should be permitted to access these exchanges. This is a major change in approach, as previous proposals restricted the exchanges to ‘professional investors’ only. [Read more](#)

Retail investors access to virtual assets

Retail investors are slowly being permitted more access to VAs. The SFC is cautious – at the beginning of 2022 retail investors were restricted to a limited suite of VA-related derivatives traded on conventional exchanges. However,

in October 2022, the SFC announced it will consider applications to authorise some ETFs tracking VA futures, and therefore be offered to retail investors. The SFC also promised a circular on a security token offerings regime, which will allow retail investor access for some offerings where there are proper safeguards. [Read more](#)

These developments mark a shift from the start of 2022 when traditional financial firms were given guidance by the SFC and the HKMA in a joint circular on how they should carry out VA-related activities. The joint circular was based on the regulatory framework for traditional products, with additional VA-specific requirements. [Read more](#)

Payment-related stablecoins regulation

Earlier this year, the HKMA issued a discussion paper seeking feedback on a regime for regulating activities relating to payment-related stablecoins. We expect the HKMA to announce next steps soon, as the HKMA intends to introduce the new regime no later than 2023/24. [Read more](#)

Developing Hong Kong CBDCs, retail and wholesale

There are currently pilot projects in the application of VAs in the financial markets, e.g. tokenising a government green bond issuance for subscription by institutional investors, and the retail CBDC ‘e-HKD’. The HKMA published a paper on the steps it is taking for the possible launch of e-HKD, which would be legal tender. [Read more](#)

The HKMA also took part in the multi-jurisdictional pilot of a wholesale CBDC project called m-Bridge to settle real-value, cross-border transactions. Work continues on this project in order to eventually create a product for the payments market.

Possible future relaxation in listing requirements

Hong Kong also aims to be an attractive place for tech listings, resulting in the Hong Kong Stock Exchange releasing the Listing Regime for Specialist Technology Companies consultation. This consultation proposes to allow enterprises in specialist technology industries which do not otherwise meet the eligibility tests for the Main Board on profit, revenue or cash flow to list in Hong Kong. Among the industries listed are cloud-based services and artificial intelligence. [Read more](#)

Competition investigations, property rights for tokenised assets and legality of smart contracts

With new impetus moving fintech forward in Hong Kong, there are a couple of points to keep in mind. One is that the Competition Commission has said that the digital economy is a priority sector, and we are aware of investigations by the Commission in this area. It is therefore a ‘watch this space’ to see whether any actions arise, and a reminder that conduct and merger rules still apply in this space.

The government’s policy statement noted that further work may be required on property rights for tokenised assets and the legality of smart contracts, so this may be an area where we see developments in the coming year.



Indonesia

In 2022, the Indonesian government issued various important regulations to support the digital transformation of the Indonesian financial sector. The reform of the financial sector towards a digital economy is expected to continue in 2023 through the enactment of the draft Bill on Financial Sector Development and Strengthening (PPSK Bill). This bill contains further regulatory provisions to support the technological development essential for digital finance. To comprehensively reform the Indonesian financial sector, the government is currently preparing - through the PPSK Bill - to amend at least 15 existing laws and introduce a new regulatory framework as set out below in order to create an integrated fintech ecosystem.

Financial sector technology innovation

The PPSK Bill provides for technological innovation in the financial sector including: the Payment System, digital finance services and cryptoassets. Any operator of this system and of these services and assets shall be a financial service institution and/or other party in the financial services sector in the form of a limited liability company or cooperatives. The regulatory and supervisory functions will be conducted by Bank Indonesia (BI) and the Financial Services Authority (OJK) and the operator shall submit data, information and/or report to BI and OJK.

Cryptoassets

In 2022 The Commodity Futures Trading Supervisory Agency (BAPPEBTI) discontinued the issuance of registration licences for potential physical cryptoassets traders. BAPPEBTI has also expanded the list of tradable cryptoassets in the physical market from 229 to 383 assets.

The PPSK Bill classifies cryptoassets as “Financial Sector Technology Innovation” which falls under the

authority of OJK and BI instead of as commodity under BAPPEBTI’s authority. There is no provision in the PPSK Bill acknowledging and allowing cryptocurrency.

CBDCs – the Digital Rupiah

The PPSK Bill amends the Currency Law to include digital Indonesian Rupiah as a type of currency in addition to Rupiah bills and Rupiah coins. Digital Rupiah shall be issued by BI upon coordination with the government and by considering monetary condition, fraud risk mitigation and data protection.

The Payment System

Bank Indonesia (BI) has issued an implementing regulation on the organisation of the Payment System by Payment Service Organisers (PJP) and Payment System Infrastructure Organisers (PIP). It regulates among others PJP and PIP licensing, calculation of ownership and control of the PJP and PIP, organisational aspects of the Payment System (including the pricing scheme, capital obligations and sole ownership policies), sources of funding and access to sources of funding.

New regulation on P2P lending services

The OJK has issued a new regulatory framework on the organisation of P2P lending services which P2P lenders will need to comply with. It obliges P2P lending services organisers be licensed by the OJK and to register as electronic system organiser with the Ministry of Communication and Informatics.

The regulation also covers the minimum paid-up capital for the P2P lending services of IDR 25bn upon establishment (with equity maintained at minimum IDR 2.5bn up to 4

July 2023) and the maximum 85% foreign ownership. The maximum amount of funding to each borrower is IDR 2bn. Any change of ownership of the organiser will need to be approved by the OJK.

Taxes on cryptoasset transactions, P2P lending services and fintech companies

New fintech taxes will apply in 2023. The Minister of Finance (MOF) has stipulated cryptoassets transactions are now subject to VAT and cryptoassets-related income is subject to income tax. The MOF has also issued a regulation imposing income tax on income derived from loan interest obtained by lenders (15% for domestic taxpayers/permanent establishment; 20% for foreign taxpayers) to be withheld by the licensed P2P lending organiser and 11% VAT on fintech services (including e-money, e-wallets, P2P lending and payment gateway).

Data Protection Law implementing regulations

The newly issued Data Protection Law is the first overarching regulation on data protection in Indonesia and marks a new era for privacy law. Under this new regime any data controller, data processor and other parties involved in personal data processing is obliged to comply with the law within two years of its enactment date on 17 October 2022.

There are certain aspects of the law that can only be implemented or enforced following issuance of the implementing regulations, including with respect to further data subjects’ rights. We can expect at least 10 implementing regulations which will start being issued soon.



Italy

Fintech companies in Italy appear to be on a positive trajectory, with the country creating two new fintech unicorns this year. The Bank of Italy issued its first set of guidelines on DLT and cryptoassets, which is a promising step towards embracing digital innovation. Legislative innovations in ICT are laying new foundations to defend against cyber-attacks.

The introduction of the VASP Register is only the first step towards the regulation of cryptoassets

2022 saw the long-awaited introduction of the Italian register of virtual currencies service providers. The information publicly available demonstrates that there is a wide range of business models adopted by the VASPs operating in Italy, and the number of persons enrolled has increased ever since. Moreover, as the regime includes quarterly reporting obligations, the authorities are starting to get a comprehensive view of the Italian crypto market, so that this significant set of data may inform future policy actions.

A tailored regulatory framework applicable to cryptoassets is only just beginning to emerge. Importantly it remains to be seen what the interplay will be between these rules and those of the EU's MiCAR. [Read more](#)

The Italian authorities will take a proactive approach on DLT, to frame market developments into safety features

In a year characterised by significant turmoil, the Bank of Italy has for the first time issued a communication addressing its approach to DLT and cryptoassets. The goal is to guide regulated firms in identifying possible safeguards to mitigate the risks associated with using such technologies in finance. The Bank of Italy also suggests it

might resort to its supervisory powers under the Banking Act (in line with the ECB's PISA framework), where the activity in cryptoassets could be material for the regular functioning of payments systems or parts thereof.

On balance, however the Communication signifies a more positive attitude of the Italian regulators towards DLT and a real effort to regulate innovation without stifling it, and it eventually clears the way for incumbents to embrace innovation (and for Fintechs to support them). Proof of this is in the Bank of Italy announcement that DLT will be the topic of the 2022 Call of Proposals of its innovation hub.

[Read more](#)

Buy Now Pay Later will continue to grow (but also to catch the regulator's attention)

Considering the increasing relevance of BNPL schemes, the Bank of Italy has finally published a supervisory notice on this topic. There is nothing particularly ground-breaking in this: the authority simply has confirmed that this form of credit is not specifically regulated, and therefore that the applicable framework and related safeguards will depend on the specific structure of the business model adopted. However, it also alerted consumers that in certain cases they may be afforded a lower level of protection.

In 2023 the regulator will continue to monitor developments in the BNPL phenomenon and to evaluate its impact on the markets.

Cyber security will be an essential priority

While information systems and electronic communications networks play a vital role in society and in finance, increased digitisation and connectivity increases cybersecurity risks correspondingly. To mitigate these risks, Italian lawmakers are taking increasing action to improve cybersecurity in Italy. The TIBER-IT framework

was recently launched, and the Bank of Italy made changes to its regulations on payment services providers to transpose the EBA guidelines on ICT and security risk management and on major incident reporting.

In 2023 we expect regulators to continue their work to foster cyber-resilience of financial institutions, including regarding the incoming application of the EU's DORA.

A law on the tax treatment and monitoring obligations of cryptoassets is expected

Taxation of cryptoassets has increasingly become a hot topic in the Italian public debate. While tax authorities have since 2016 been providing clarifications on the sale, purchase and holding of cryptos, a law that comprehensively addresses the tax treatment and tax monitoring obligations applicable to cryptoassets was never enacted. In its absence, several taxpayers had voluntarily approached the tax authorities to negotiate an agreement to self-cure their tax and monitoring position.

The topic is therefore of the utmost interest, and – in light of the recently published draft 2023 Budget Law, which contains provisions on direct and indirect taxes, tax monitoring obligations and self-curing procedures applicable to cryptoassets – it seems that 2023 will finally be the right year.

Read more: Stay up-to-date with the market and legal developments of the Italian fintech ecosystem by subscribing to our [“Digital Pulse” newsletter](#)



Japan

In the summer of 2022, the Japanese cabinet approved a Basic Policy for Economic and Fiscal Management and Reform 2022 which has also set the fintech agenda for 2023. The policy notes “a growing movement to create new value through the management and utilisation of data by users themselves, such as the promotion of a more decentralised and reliable internet and the spread and expansion of digital assets on the blockchain”.

Promoting reform

In order to support this movement to create new value, the government will seek to refine the functions of what it is calling the “trusted web” (the concept of a mechanism to guarantee the reliability of information and data distributed on the internet) and to promote its international standardisation. It also intends to propose legislation in 2023 to expand the use of digital content, including the metaverse.

Specifically with respect to promoting fintech, the government is looking to develop a system for raising funds through security tokens (digital securities), to relax consumer protection screening criteria for eligibility to sell crypto, and to prepare interpretive guidelines for the proper functioning of such tokens as payment instruments.

Japan’s CBDC

With regard to proposals for a Central Bank Digital Currency, in 2022 the Bank of Japan completed the proof of concept for the basic functions of a CBDC moved to the phase of proof of concept for the peripheral functions. In light of these developments, in 2023 Japan’s Financial Services Agency (JFSA) in cooperation with the Ministry of Finance, will also contribute to this study in considering the impact of a CBDC on Japan’s financial institutions.

Promotion of Web 3.0, NFTs, DAO and stablecoins

As part of the Japanese government’s development of a regulatory environment to support the development of Web 3.0 – including the use of NFTs and DAOs based on the blockchain technology – an Amended Payment Services Act clarifies that stablecoins whose value is pegged to that of the yen, dollar or other currencies can be issued by licensed banks, registered fund transfer service providers and trust companies. This act should come into force by June 2023 at the latest.

The Act will also require “intermediaries” responsible for circulation of stablecoins (i.e., buying, selling, exchanging and intermediating, providing custody of, transferring stablecoins on behalf of the issuer) to register with the JFSA.

Anti-money laundering and counter-terrorist financing regulation

Issuers and intermediaries of stablecoins will need to comply with AML/CFT requirements and adequately protect the users’ rights, such as subsequent revocation of transactions and compensation for losses, in the event of bankruptcy of issuers or intermediaries. Furthermore, in order to expand the use of digital content – including the metaverse – it is expected that a legislative measure (details of which are to be confirmed) will be presented at the next ordinary parliamentary session of 2023.

The Japanese government has submitted to the extraordinary session of the Diet of Japan a package of amendments to laws related to money laundering, such as the Act on Prevention of Transfer of Criminal Proceeds, the Foreign Exchange and Foreign Trade Act, and the bill is currently under discussion in the House of Representatives.

By spring 2023, it will introduce travel rules, which will impose an obligation on operators that exchange cryptoassets and stablecoins to verify the names and other information of users and notify them between operators, at the statutory level to prevent money laundering.

Critical operators of critical infrastructure

In May 2022, the Diet approved its Economy Security Act on the promotion of national security through integrated economic measures. This will come into effect in several phases beginning in 2023.

The Economic Security Act focuses on the safety and reliability of critical infrastructure and empowers the government to designate critical operators (DCOs), – based on a certain threshold and a lack of substitutability – of infrastructure services (including rail road transport, airport, telecommunication and broadcasting, power, oil, gas and water supply, banking and other financial services). DCOs will need governmental approval before introducing or entrusting maintenance or management of critical equipment.

The Economic Security Act will significantly impact DCOs, but also (1) companies that provide critical equipment to the DCO in question, (2) companies that provide parts, etc. to the critical equipment providers and (3) companies that will manage and maintain specified critical equipment owned by the DCO concerned.



Luxembourg

As one of the major finance hubs of the world, Luxembourg has seen remarkable growth in the fintech sector over the past years. On the one hand, traditional players are keeping up with current trends and deploying new and innovative solutions from Luxembourg throughout the EU, by relying on their passporting rights. On the other, numerous start-ups have chosen Luxembourg to develop and grow their innovative businesses. The Luxembourg House of Financial Technology (LHoFT) supports start-ups in their development and brings them together with the more traditional players.

The Luxembourg financial sector regulator (CSSF) actively promotes and encourages technology-based innovation in the Luxembourg financial services market. While assessing projects on a case-by-case basis, the Luxembourg regulator implements a technology-neutral perspective, seeking pragmatic solutions, all while remaining prudentially risk-averse. Overall, the Luxembourg market, including its closely-knit community of finance/technology players, decision makers and investors offers an ideal playground for the development and innovative evolution of technology-based finance.

Fintech start-ups reaching maturity, additional financing and market consolidation

Among the various start-ups having commenced their journey a couple of years ago, winners are starting to emerge as they reach maturity and mainstream adoption. This will likely attract additional financing and generate takeover offers.

The current trend of market consolidation among start-ups and existing players is likely to continue as well, in light of ever-increasing cost-cuts and the drive for profitability.

Increased use cases for DLT and the response of the Luxembourg authorities

Over the past few years, the CSSF has been increasingly approached by financial and non-financial institutions, incumbents and start-ups wishing to present a large range of applications and use-cases of DLT across various sectors.

In response, the Luxembourg regulator has issued a non-binding document in the form of a “white paper” aimed at guiding interested professionals in the conduct of any due diligence process related to DLT and its use in the financial sector.

The Luxembourg asset management sector is particularly prone to technological disruption by DLT-based solutions (e.g. distribution, collateral management, KYC). We would expect this trend to continue and new use-cases to emerge, while some of the existing projects will reach maturity and mainstream adoption.

Preparation for the DLT Pilot Regime and tracking of EU regulatory developments

In anticipation of the EU DLT Pilot Regime, a new draft bill (N° 8055) has been lodged with the Parliament, bringing the existing markets in financial instruments (MiFID) and financial collateral regimes in line with technological developments involving DLT. Following its predecessor laws, the third Blockchain Law sets the scene for the implementation of the DLT Pilot Regime.

We expect a further increase in projects making use of DLT in the financial sector and a number of Luxembourg businesses opting for the registration as DLT-based market-infrastructure as soon as the Pilot Regime kicks in, in 2023.

We will likely see further developments in the context of the saga of the “Luxembourg Blockchain Laws”.

Generally, the Luxembourg market will continually monitor other developments on an EU level, notably DORA and MiCAR.

Further developments in the context of virtual assets

The inclusion of a legal definition for “virtual assets” in the Luxembourg AML Law brings digital assets within the scope of Luxembourg anti-money laundering regime. The CSSF has also published guidance for consumers in respect of retail investment in virtual assets and issued FAQs on virtual assets for banks and asset managers.

As increased legal certainty around the qualification and safekeeping of virtual assets emerges, we have seen increasing numbers of registrations of Virtual Asset Service Providers (VASPs) and use cases in relation to virtual assets (both in tokenised and native form). This trend is likely to accelerate in 2023, in the run-up to the implementation of the MiCAR regime.

Luxembourg funds investing in cryptoassets

Given that Luxembourg is one of the major global asset management hubs, various funds investing in cryptoassets have started to develop over the past years. With the market reaching further maturity (notably in terms of authorised AIFMs and depositaries willing to take on this new asset class), the number and volume of funds created are likely to increase throughout 2023 – although this will be subject to improvements in the performance of crypto markets.



Mexico

Mexico’s fintech market continues to expand while the regulatory landscape has remained largely unchanged. Investment in the sector continues to be perceived as an opportunity in Mexico and throughout the region. As a key trend we are seeing larger traditional banking operations increasingly seeking to establish pure online retail banking platforms to compete in the fintech arena. Meanwhile, retail and convenience stores that obtain a fintech authorisation can use their privileged position to onboard cash users to their digital wallet services to gain a larger share of the payments and remittances market. Going into 2023, regulation enabling open finance could stimulate growth in the sector.

Fintech, investments and funding and corporate structuring

Mexico has a unique regulatory landscape, which requires setting up an ad hoc domestic structure for each new financial product. This means that investment decisions in the sector may require more time and effort than in other jurisdictions.

However, many players and associations agree that the opportunity which the Mexican market presents is worth the effort, and anticipate a continued flow of investment into the fintech industry by both well-established players and newcomers.

Fintech markets

The digital assets market remains active, despite the loss of value experienced during 2022. Regulators have not changed their stance with respect to the restriction for financial entities to keep digital wallets on behalf of their clients. Online personal and pay-day loan companies suffered an increase in their funding costs derived from both the general increase in interest rates and the liquidity of lead players in such market.

Newcomers to the Mexican market will require a detailed analysis of their financial products to set up bespoke legal structures aiming to mitigate risks and reduce time-to-market and compliance costs as much as possible.

Digital assets

The Central Bank will likely continue to implement its “safe distance” policy to restrict financial entities from any intermediation of digital assets and will enforce its regulations with respect to clearing of fiat funds derived from digital asset transactions.

Open finance

We expect that crucial regulation for an open banking system will be issued in the following months. These should address how financial entities should establish APIs to enable users’ transactional data portability in Mexico. These regulations may have a major impact on the market, as they may increase the level of competition and the use of AI in the sector.

However, regulation continues to restrict Fintech as a Service structures that are typical in other jurisdictions. There are calls from the sector for regulatory amendments to provide safe harbours with respect to FaaS and Banking as a Service Models, as well as for the deployment of *superapps*, and the provision of other services by payment entities and crowdfunds.

Broader regulation of the digital economy

The Mexican antitrust commission has launched investigations into the payments system as well as in retail digital platforms; and we expect increased scrutiny in the sector from a competition perspective going forward.

It is expected that the Congress will discuss a draft bill to sanction electronic credit instruments and promissory notes. If such bill is enacted, it could have a deep impact on the digital economy, since a significant portion of market participants are hesitant to use digital notes while relying on the current legal framework.

Digital services provided on a platform and on a cross-border basis may be subject to value added tax and registration in Mexico. The tax authority updates a public list of digital platforms operating in Mexico and closely scrutinises compliance by digital service providers.





People’s Republic of China

2022 witnessed a continuous effort to progress digitalisation and tech enablement in the Chinese finance industry. This followed regulatory shocks in the preceding 18 months which resulted in a more cautious approach being taken by fintech enterprises and their investors. While supporting technological developments, central regulators have sought to further strengthen the legal system and enhance scrutiny in the fintech sector, with a view to ensuring commercial developments occur in an orderly and sustainable manner.

Going into 2023, the financial holding company regime has now been activated and the first batch of applications approved; similarly, regulators are continuing to tighten antitrust and data security supervision following perceived weaknesses of some players in the industry’s compliance strategies. Meanwhile, the authorities’ renewal of China’s fintech plan, declaring their vision to have a “digitalised, intelligent, green and fair” fintech sector, may lead to exciting opportunities in the ESG space.

Starker impact of sector blueprint expected

In 2023, as it moves into its second year, the refreshed Fintech Development Plan will continue to focus on improving digitalisation in the finance industry and strengthening prudential regulation of fintech. The People’s Bank of China (PBOC) has set eight specific missions which could accelerate real changes in infrastructure, industry application, fintech innovation, fintech governance, data capability, digitalisation of financial services, regtech and talent development. [Read more](#)

Ethics and social responsibility, in particular, are expected to be a top priority following the release in 2022 of a high-level policy and separate guidelines on strengthening technology ethics governance in the finance industry. [Read more](#)

Digital yuan trials to expand

Having expanded domestically to 23 pilot zones across 15 provinces, China will explore applying the digital yuan in cross-border payment scenarios. China’s central bank digital currency (CBDC) is already playing an active role in the “m-CBDC Bridge” digital currency project led by the Bank for International Settlement, and is progressing technical testing for cross-border payments between the Mainland and Hong Kong SAR.

Further expansion of the pilot zones is expected at a steady pace, with a tried-and-tested legal regime being a foundational must for the digital yuan. In particular, in October, the PBOC publicly highlighted privacy protection as one of the top issues for launching its CBDC. The regulator intends to deploy advanced technologies and strict control mechanisms to ensure data security for the public’s use of China’s CBDC.

Financial holding companies to emerge

The first three financial holding companies of stated-owned financial groups having been approved by the PBOC in 2022, and market watchers await the central regulator’s approval of the first internet financial holding company soon. At the same time, regulators are busy formulating regulatory guardrails to supplement the 2021 and 2022 rules published for these new structures on establishment, daily operation, and senior management’s qualifications.

Combined with orders from the PBOC for China’s largest internet groups to share user data with state-backed credit-scoring companies, greater integration of public and private elements of the fintech ecosystem is likely to be a defining factor at the top of the industry in 2023.

Cross-border data transfers

All businesses in China with cross-border operations continue to grapple with uncertainty of the practical application of new security assessment requirements and proposed standard contractual terms for data exports following further implementation of the Personal Information Protection Law this year. Balancing consumer privacy but fostering rapid development in data use, especially in cross-border payments, will be a significant test in 2023 for the PBOC and the payment service providers and other businesses that the central bank supervises in the digital ecosystem. [Read more](#)

Increased anti-trust scrutiny

Draft amendments to the Anti-Monopoly Law (AML) in 2021 proposed to reinforce merger review in certain sectors including finance and technology. Subsequently, the State Administration of Market Regulation (SAMR) announced a penalty against CITIC Bank and Baidu for their failure to file for review of their establishment of a virtual bank.

SAMR’s heightened scrutiny of fintech is expected to continue in 2023 with the new Anti-Monopoly Law having come into force and SAMR, along with other fintech regulators, consistently advocating to strengthen enforcement against misconduct in the sector, with a focus on exclusivity arrangements in the digital payment space and abuse of dominance practices by platform operators. [Read more](#)



Singapore

The Singapore fintech landscape continues to grow alongside supportive legal and regulatory developments – case law has clarified the proprietary nature of cryptocurrencies and NFTs, and new regulatory instruments have been promulgated and are being considered to protect investors (such as a Buy Now Pay Later code). In particular, the Monetary Authority of Singapore (MAS) continues to work towards building an innovative and responsible digital asset ecosystem in Singapore through various initiatives, recognising the transformative economic potential that tokenisation and distributed ledgers can offer.

Digitisation of financial products and markets

Innovation in the digital assets industry is fostered through industry collaboration, experimentation and exploration – see [Project Guardian](#) (asset tokenisation), [Project Orchid](#) (retail CBDC system) and [Ubin+](#) (cross-border foreign exchange settlement using wholesale bank digital currency).

There are however risks of market abuse and speculative behaviour in cryptocurrencies, and MAS is looking to implement further measures to ensure responsibility in the digital asset space:

- > **Mitigating consumer harm:** MAS is currently [consulting](#) on regulatory measures to reduce the risk of consumer harm for cryptocurrency trading.
- > **Upholding stability of stablecoins:** the MAS is [proposing](#) to introduce a regulatory regime that supports the development of credible and reliable stablecoins.
- > **Money Laundering/Terrorist financing:** the [Financial Services and Markets Act](#) and amendments to the [Payment Services Act 2019](#) are likely to come into force in 2023, which will expand the types of services subject to AML/CFT regulation.

Separately, in September 2022, the Infocomm Media Development Authority and MAS [consulted](#) on strengthening participation of merchant acquirers and payment schemes in SGQR, and to ensure that SGQR can be a financially self-sustaining national e-payments infrastructure.

Fintech investments and funding and corporate structuring

The number of venture capital equity funding rounds in the first nine months of 2022 grew by 6% in Singapore, while there was a minor dip in the overall value of investments (\$8.29b) in the same period compared to last year. Of the total investment amount, the fintech sector attracted 25% of the investment dollars, with wealthtech having the best performance of all fintech categories, demonstrating Singapore’s continuing position as a fintech centre for the region.

However, notwithstanding the resilient performance of the fintech sector, the investment environment remains uncertain given the turbulent global outlook. Many fintech companies held off fundraisings in 2022 and their cash runways are expected to dry up in 2023, so we may see down round fundraises, in-market consolidation or opportunistic M&A from strategic players.

The mitigation of data and cyber risks continues to be a regulatory focus

The Personal Data Protection Commission (PDPC) and Infocomm Media Development Authority (IMDA) [launched](#) a Privacy Enhancing Technologies (PET) Sandbox to provide firms with a testing ground for privacy enhancing technologies that allow them to use and share business data easily, while masking sensitive information. The MAS has also provided [insights](#) on how to mitigate technology

and cyber risks in the financial sector. This is part of a broader objective to increase cybersecurity and public trust in the financial services sector which is expected to continue into 2023.

This is consistent with the review of the Cybersecurity Act which is currently ongoing – a public consultation will be conducted in early 2023.

Singapore Court recognises proprietary nature of digital assets

The Singapore High Court has recognised [cryptocurrencies](#) and [NFTs](#) as “property” for purposes of granting interim freezing injunctions over them. It is likely that more crypto-related disputes will be heard before the Singapore courts, in light of the vibrant fintech landscape and the court’s supportive attitude from recent decisions. We can also expect further legal conceptual developments of cryptoassets to be led by the courts rather than legislation.

Increased insolvency filings by crypto market players

Multiple cryptocurrency exchanges (such as [Zipmex](#), [Defi Payments](#) and [Hodlnaut](#)) have made insolvency related filings in Singapore while foreign representatives of the crypto hedge fund Three Arrows Capital filed for [recognition in Singapore](#) of liquidation proceedings commenced in the British Virgin Islands.

The Singapore courts are likely to see more such applications over regional digital assets companies, in view of recent legislative changes (such as the amended [Singapore International Commercial Court \(SICC\) Rules](#)) that facilitate the hearing of cross-border restructuring and insolvency matters. The number of new cases may decrease as crypto prices stabilise and regulatory measures are imposed upon market participants.



Spain

Going into 2023, the Spanish regulators are certainly pushing to create a clear regulatory landscape where fintech companies can flourish while investor and client protection is ensured. They have run a number of public events and webinars to discuss new legislation and provide interpretation guidance. Regulators are also positioning themselves to better cope with the increased supervisory demands of digitalisation and innovation in financial services and as part of this effort they have ramped up their hiring of personnel with technical profiles such as data analysis and cyber risks.

AML registration requirements for fintech

Since January 2022, providers of exchange services between virtual currencies and fiat currencies and custodian wallet providers must register with the Bank of Spain following the implementation of the EU Anti Money Laundering Directive V. Over 40 providers are now registered and we can expect many more to follow in 2023. [Read more](#)

Regulation of cryptoasset promotions

In January 2022 the Spanish securities and market regulator (CNMV) published its Circular 1/2022 to regulate the promotions of cryptoassets in Spain. This piece of regulation is the first of its kind in the EU and in 2023 we expect to see several cases of enforcement action based on its rules. [Read more](#)

Impact of EU law on digitisation of financial products and markets in Spain

The Spanish regulators will have to work hard to prepare for the application of the EU's MiCAR, the funds travel rule and the DLT Pilot Regime regulation, amongst others. We expect this to bring some changes to national legislation.

Particularly, in relation to the DLT Pilot Regime, the CNMV has openly spoken about its desire that the DLT Pilot Regime becomes a success.

We expect the CNMV and the Spanish Treasury to push for the necessary legislative changes, including as regards company law, so that major European DLT infrastructures can be established in Spain and Spanish companies can benefit from the use of this new alternative way to raise funds.

Financial regulatory sandbox

Having successfully completed the trial phase of a number of projects accepted in the Spanish financial regulatory sandbox, a majority of which relate to the use of DLT and many others involving the use of AI, cloud computing, biometrics or digital identity, among other technologies, 2023 will see two additional rounds of applications for new projects.

Cyber risk, operational resilience and data protection

Data breaches and identity theft are a significant risk for fintech companies. Accordingly, we expect the Spanish Data Protection Agency (the AEPD) to continue to enforce data protection and cybersecurity laws against financial institutions and Fintech companies in 2023.

The Bank of Spain has launched its TIBER-ES framework for Threat Led Penetration Testing to which entities can apply. We expect the Bank of Spain to continue its work to foster cyber-resilience of financial institutions and monitor the application of the EU's DORA.

Regulatory enforcement in financial services

We expect to see increased regulatory actions against providers of financial services, particularly against those acting cross-border into Spain through digital means, when they do not comply with licensing requirements or promotion rules. In particular, we expect the CNMV to continue its enforcement actions towards unlawful promotions of cryptoassets in Spain.

Read more: Stay up-to-date with the legal developments impacting Spain's fintech ecosystem by subscribing to our quarterly [Payment Services newsletter](#).



Sweden

In 2022 the Swedish fintech market suffered a slowdown due to, amongst other things, high inflation, interest rate hikes and other general trends toward recession. The unstable geopolitical landscape following the outbreak of the war in Ukraine hasn't helped and has also raised some concerns around reducing foreign investment in Sweden. The most high-profile victim of the changing macro-economic landscape has been Swedish payments company Klarna, which has suffered severe financial difficulties, with its valuation falling over 80% in the year to date.

Fintech investment and funding

Despite the general deteriorating economic climate, some optimism remains among investors and the international business community, which is reflected in continued high levels of activity in the fintech market going into 2023.

The Swedish fintech market remains amongst the top performing in Europe and the general sense is that the fintech investments in Sweden will continue to grow over the next few years, albeit at a slower rate.

E-krona

In April 2022, the Swedish Central Bank (*Sw: Sveriges Riksbank*) published its report from phase 2 of the E-krona pilot, which included investigations into whether and how an E-krona could work offline, how banks and other payment service providers could be integrated into an E-krona network and details of the performance testing of the current proposed solution.

The work from phase 2 has shown that it is possible to integrate a potential E-krona into the internal systems of banks and carry out transactions with E-krona offline; however, the offline payments would entail certain risks that would need to be managed.

The E-krona pilot entered phase 3 during 2022 and is expected to progress into 2023. Phase 3 of the E-krona pilot will, amongst other things, look to examine the requirements for a future-proofing any E-krona, as well as aim to resolve some of the outstanding legal issues, such as the application of settlement finality.

Payment services – instant settlements and cross-border payments

The Swedish payment services market is on the verge of a major transformation. In May 2022, the Swedish Central Bank launched the settlement service RIX-INST which will enable instant settlement of individual payments in central bank money 24/7/365. To provide the service, the Swedish Central Bank uses the technical platform developed by the Eurosystem for the TARGET Instant Payment Settlement platform.

Along with RIX-INST, progress continues for P27 (the joint initiative by the six largest Nordic banks on cross-border payments) and the participating banks are expected to introduce their new payment infrastructure in 2023, which will enable real time cross-border payments in multiple currencies. Swish, the Swedish retail payments transfer service, is to be the first service to benefit from RIX-INST.

BIS Innovation Hub Nordic Centre

The Bank for International Settlements and the central banks of Israel, Norway and Sweden are launching [Project Icebreaker](#), a joint exploration of how central bank digital currencies can be used for international retail and remittance payments. The objective is to test some specific key functions and the technological feasibility of interlinking different domestic CBDC systems. Project Icebreaker will continue until the end of 2022, with a final report due by end of Q1 2023.

Using blockchain to streamline the Swedish company registry

The Swedish Companies Registration Office has initiated a collaboration with the Gothenburg (*Sw: Göteborg*) Blockchain Lab to develop a blockchain-based verification service called Proof of Business. The purpose of Proof of Business is to enable businesses to collect and manage verified information about their company, as well as facilitate third party access, in order to make company administration services simpler, more secure and more efficient. Currently, this is at the pilot stage, with a progress report due by end of Q1 2023.

ESG-focused firms will be the big growth story

The growing trend of increased regulatory scrutiny on environmental and climate change, coupled with the increased demand for sustainable manufacturing methods, products and new business models, has led to increased focus from the Swedish tech world on these ESG issues and we expect to see significant growth in Greentech and Cleantech, as well as ESG elements in the fintech space in 2023.





United Arab Emirates

The UAE is focused on positioning itself as a fintech nexus in the Middle East as it aims to become a powerhouse on the global fintech stage. This is being supported by a pro-innovation approach to regulation: the last two years have seen the enactment by the Central Bank of the UAE (CBUAE) of specialised regulations in specific fintech areas of high growth, such as electronic retail payments and stored value systems, which are intended to create innovation-friendly “lite” regulatory frameworks to facilitate the development of the sector. The next, more recent step in this trend has been the increasing coordination between regulators at multiple levels of government to delineate jurisdictions and eliminate overlap of areas of regulatory responsibility in order to provide the regulatory clarity and certainty needed to attract investment.

Emergence of specialised virtual assets regulation

One of the most significant such developments this year has been the enactment of the Dubai Virtual Asset Law that establishes, following extensive consultations with the UAE federal Securities and Commodities Authority, the CBUAE and the financial regulatory authority of the Dubai International Financial Centre free zone, a Virtual Assets Regulatory Authority with plenary power to oversee the trading, exchanging and dealing in virtual assets in the Emirate of Dubai.

The coming year will be crucial for assessing the success of this regulatory approach. If successful in Dubai, the public policy intention is to replicate this framework at a federal level within the UAE.

Rise of fintech-FI partnerships

The year 2022 has witnessed the explosive growth of partnerships between traditional banks and new fintech players focused on developing and taking to market innovative payments and digital banking products and services. We expect that this trend will continue and even intensify in the year ahead.

The popularity of this model is mostly due to the highly symbiotic relationship between traditional banks, that can provide solid carrier vehicles for the innovative offering through their CBUAE licences and large customer base, and nimble fintech startups, which bring to the table bold vision and cutting edge technology.

Proliferation of electronic payments and digital banking solutions

The UAE, as well as the broader GCC region, has seen rapid growth in the field of electronic payments and digital banking solutions. The proliferation of electronic payments processing offerings has been spurred by the favourable regulatory framework established by the CBUAE in the form of the Retail Payment Services and Card Schemes Regulation enacted last year.

Similarly, we have seen the rise of a number of digital banking platforms using stored value and electronic wallet facilities to provide basic banking services to the large population of “unbanked” low-income expats in the UAE, a trend which we expect to continue into 2023.

Sustained growth of Buy Now Pay Later products

BNPL products continued to gain prominence in the past year, and their growth is expected to continue unabated in 2023. The popularity of the BNPL model in the UAE and the broader Gulf region is to an extent attributable to the general aversion of consumers in the region to traditional credit products (whether for religious or practical reasons such as affordability or availability), as well as their relative accessibility to a large population of “unbanked” low-income expats.

Increasing regulatory focus on good data protection and security practices

2022 saw the coming into force of the first generally applicable and comprehensive federal data protection law in the UAE (the Personal Data Protection Law). We expect the effective enforcement of this law to commence in earnest in 2023. This new law will supplement, and in many ways augment, the already existing data protection rules enacted by the CBUAE in the financial services sector. Along with the recent comprehensive updates to the UAE cybercrime legislation, it is part of a clear trend of a stepped-up regulatory effort to focus businesses in the country on deploying and observing good data protection and cybersecurity practices.

Going into 2023, the potential data localisation restrictions that the new UAE data protection law may entail once the relevant regulations are published could also complicate cross-border data flows for fintech businesses that employ shared-services models for their operations in the region.



United Kingdom

The UK is at an important crossroads as it seeks to retain its role as a leading fintech hub. Post-Brexit, it is developing new regulatory policy in areas such as cryptoassets and AI where it can distinguish its approach from that of the EU. Market headwinds continue to complicate some Fintechs’ scaling strategies but there could be opportunities for more consolidation in the sector.

Crypto / DLT

In the UK, most cryptoassets and cryptoasset activities are unregulated, limiting how regulators can intervene in crypto markets. The priority for new regulation is stablecoins: in 2023, some stablecoins will be brought within payments rules and the Bank of England will take powers to oversee systemic stablecoins. The FATF’s travel rule is set to apply to cryptoasset transfers from September 2023 and crypto advertising will be brought within the scope of the UK’s financial promotions regime ([read more](#)). The Financial Services and Markets Bill will complete its passage through parliament and lay the ground for a wider range of crypto activities to be regulated in the future. [Read more](#)

Meanwhile, the UK is signalling its support for more DLT-led innovation via a new sandbox which will allow financial market infrastructure to experiment with distributed ledger technologies.

Payments and CBDC

For e-money issuers and payment institutions the regulatory priority is complying with the new cross-sector consumer duty to deliver good outcomes for retail customers. The Financial Conduct Authority expects firms to start meeting the higher standards imposed by the duty from 31 July 2023.

The Payment Systems Regulator’s work plan includes new measures to tackle authorised push payment fraud,

extending confirmation of payee, making improvements to the Faster Payments system and unlocking the development of the New Payments Architecture.

The Bank of England is expected to move into a development phase to test the feasibility of issuing a central bank digital currency. This could be supported by further work on a digital identity and attributes trust framework for the UK.

Big Tech in finance

Tech firms’ involvement in financial services is under scrutiny. An incoming critical third party regime means that some tech providers will have to meet operational resilience rules and testing standards.

The regulatory perimeter could change to accommodate a wider range of firms playing a systemic role in payment chains. And the FCA may recalibrate its policy approach when it responds to its consultation on the potential competition impacts from Big Tech’s entry and expansion in the retail financial services market. [Read more](#)

Fintech investments, M&A and merger control

Financial institutions will increasingly access fintech ideas and technology via strategic investments, collaborations and partnerships. Meanwhile, we expect Big Tech’s entrenchment in payments to lead to more close scrutiny of fintech M&A ([read more](#)). The Competition and Markets Authority has experience of M&A in the fintech sphere, with recent reviews of the FNZ/GBST, IHS Markit/ME and LSEG/Quantile mergers.

Data governance, AI and algorithms

The financial services and competition regulators have flagged concentration risks associated with Big Tech players holding vast amounts of data concerning both

retail customer behaviour and wider market activities. The regulators also continue to grapple with balancing the need to ensure data protection with the desire to use ever more data to improve services and manage risks. Meanwhile, the government is considering how to make changes to data protection laws which will strike a balance between being business-friendly yet maintaining the EU’s treasured adequacy assessment.

In contrast to the EU, the UK government has proposed a “light-touch” sector-specific approach to regulating AI ([read more](#)). Financial services regulators have issued a discussion paper to industry and in 2023 will be considering what guidance is required for firms implementing AI in their business.

We are seeing increasing collaboration between the FCA and other regulators in the tech sector pursuant to the Digital Regulation Cooperation Forum which has, for example, scrutinised the cross-sectoral benefits and harms of algorithms.

Financial crime in crypto and DeFi

Cyber hacks, theft and fraud are particularly rife – and increasing – in crypto and DeFi which is leading to increased private litigation as consumers seek recompense. Once enacted, the Economic Crime and Corporate Transparency Bill will allow UK enforcement agencies more quickly and easily to seize and recover cryptoassets suspected to be the proceeds of crime or associated with illicit activity, such as money laundering, fraud and ransomware attacks.

Read more: Stay up to date on fintech issues impacting the UK by subscribing to our [Payments Podcasts and Newsletter](#) and [Financial Regulation Insights](#)



United States

Looking ahead to 2023, we expect to see increased acquisition and joint venture activities in digital asset and blockchain markets, as established Web2 and brick-and-mortar companies look to digital native players to make their marks on Web3. We also expect a continued tussle for territory when it comes to the enforcement of existing regulation in the digital asset space, and the potential development of bespoke rules. How best to regulate digital assets is a topic which is rising in priority on both the domestic and international stage following the insolvencies of several high-profile crypto exchanges.

Regulation by enforcement re digital assets

In 2023, we expect to see continued enforcement in the digital asset space by a variety of US regulators, as the SEC ([read more](#)), the CFTC, FinCEN, the OCC and others assert – and test the contours of – their jurisdiction over the industry.

To date, the SEC has brought over 100 digital asset-related enforcement cases, as SEC chair Gary Gensler, maintains his view that the issue is not lack of regulation – but failure of digital asset and blockchain firms to comply with existing rules.

An evolving digital asset regulatory framework

The high profile bankruptcy of the FTX crypto exchange, and the resulting contagion (including the BlockFi bankruptcy), has focused attention on whether crypto-specific regulation is needed.

Some feel that the U.S. digital asset industry would benefit from the legitimacy associated with a comprehensive registration, supervision and enforcement regime specific to digital assets. Others believe that existing regulation is sufficient. Either way, questions remain concerning which federal agency should take the lead in regulating the space.

In March 2022 the White House released what it described as a comprehensive crypto framework, although many believe that a need remains for greater legislative guidance and regulatory clarity about how various regulators will coordinate ([read more](#)). While several ambitious and thoughtful proposals for potential new federal legislation have been introduced, it seems that these high-profile proposals have not gained sufficient traction for near-term adoption, particularly following the FTX crisis.

A recent U.S. Supreme Court decision may also have called into question the extent to which a federal regulator may regulate emerging areas that go beyond its explicit statutory authority.

The SEC’s case against Ripple is ongoing and, following the recent SEC victory against LBRY, market participants continue to reflect upon the implications of enforcement actions on the securities law status of digital assets. Some market players continue to push for new laws, others are focused on litigating, and still others seek to [engage proactively with regulators](#) to try to better understand concerns and identify compliant paths forward.

In 2023, the U.S. regulatory landscape will be an important - and exciting - space to watch.

Moving towards a digital dollar?

The Federal Reserve has announced that it is looking to introduce a U.S. central bank digital currency in the form of a [digital dollar](#), with an estimated adoption timeline of between 2025 and 2030. In 2023, we can expect careful deliberation concerning the potential risks and benefits of what would be a fundamental transformation of the world’s most widely used reserve currency.

Broader fintech consumer protection

Antitrust regulators are also focused on the need to protect consumers and market integrity in the fintech space. The U.S. Department of the Treasury, working with the White House Competition Council, released a report detailing how new non-banks, in particular fintech firms, are adding “significantly” to the number of firms competing in core consumer finance markets.

These authorities recommend that regulatory oversight for these newer entities be “enhanced” with respect to consumer financial activities, such as risks related to data privacy and regulatory arbitrage.

AI and data in finance

The ongoing tensions between personal privacy, monetising data and freedom of speech will continue to challenge U.S. regulators as they contemplate how best to regulate AI to protect consumers, while promoting innovation in the financial services sector.

Expansion of brands into the metaverse

In 2023, we will see the expansion of brands into the developing metaverse, with increased emphasis not just on NFTs, but also on the creation of user-friendly portals into that new world. Digital assets could prove key to the interoperability of payments and digital identity between metaverse platforms.

As we contemplate these opportunities, considering the many varied, and still uncertain, legal risks will be key. [Read more](#)

Contacts

Australia (Allens)



Elyse Adams
Partner, Melbourne
Tel: +61 3 9613 8534
elyse.Adams@allens.com.au



Valeska Bloch
Partner, Sydney
Tel: +61 2 9230 4030
valeska.bloch@allens.com.au



David Rountree
Partner, Brisbane
Tel: +61 7 3334 3368
david.Rountree@allens.com.au



Kerensa Sneyd
Partner, Melbourne
Tel: +61 3 9613 8306
kerensa.Sneyd@allens.com.au



Simun Soljo
Partner, Sydney
Tel: +61 2 9230 4635
simun.soljo@allens.com.au

Belgium



Guillaume Couneson
Partner, Brussels
Tel: +32 2 501 93 05
guillaume.couneson@linklaters.com



Maurice Demeyer
Associate, Brussels
Tel: +32 2 501 92 77
maurice.demeyer@linklaters.com



Etienne Dessy
Partner, Brussels
Tel: +32 2 501 90 69
etienne.dessy@linklaters.com

EU



Guillaume Couneson
Partner, Brussels
Tel: +32 2 501 93 05
guillaume.couneson@linklaters.com



Florian Reul
Managing Associate, Frankfurt
Tel: +49 69 71003 194
florian.reul@linklaters.com

France



Laurent Benoit
Counsel, Paris
Tel: +33 1 56 43 58 39
laurent.benoit@linklaters.com



Sonia Cissé
Partner, Paris
Tel: +33 1 56 43 57 29
sonia.cisse@linklaters.com



Sébastien Herbert
Associate, Paris
Tel: + 33 1 56 43 28 76
sebastien.herbert@linklaters.com



Ngoc-Hong Ma
Partner, Paris
Tel: + 33 1 56 43 58 93
ngoc-hong.ma@linklaters.com



Clémentine Richard
Managing Associate, Paris
Tel: +33 1 56 43 27 73
clementine.richard@linklaters.com

Contacts

Germany



Christoph Barth
Partner, Düsseldorf
Tel: +49 211 22977 306
christoph.barth@linklaters.com



Thomas Broichhausen
Partner, Munich
Tel: +49 89 41808 119
thomas.broichhausen@linklaters.com



Jördis Heckt-Harbeck
Counsel, Frankfurt
Tel: +49 69 71003 257
joerdis.heckt-harbeck@linklaters.com



Florian Reul
Managing Associate, Frankfurt
Tel: +49 69 71003 194
florian.reul@linklaters.com



Christian Storck
Partner, Frankfurt
Tel: +49 69 71003 531
christian.storck@linklaters.com

Hong Kong SAR



Kishore Bhindi
Counsel, Hong Kong SAR
Tel: + 852 2901 5066
kishore.bhindi@linklaters.com



Clara Hackney
Senior Associate (Knowledge),
Hong Kong SAR
Tel: +852 2901 5611
clara.hackney@linklaters.com



Carl Fernandes
Partner, Hong Kong SAR
Tel: + 852 2901 5146
carl.fernandes@linklaters.com



Albert Yuen
Counsel, Hong Kong SAR
Tel: +852 2901 5068
albert.yuen@linklaters.com

Indonesia (Widyawan & Partners)



Teguh Arwiko
Partner, Jakarta
Tel: + 62 21 2995 1554
teguh.arwiko@linklaters.com



Kevin Eduard Matindas
Managing Associate, Jakarta
Tel: +62 21 2995 1513
kevin.matindas@linklaters.com



Karen Phang
Partner, Singapore
Tel: +65 6692 5749
karen.phang@linklaters.com



Arie Priadhi
Managing Associate (Knowledge),
Jakarta
Tel: +62 21 2995 1551
arie.priadhi@linklaters.com

Italy



Andrea Arosio
Managing Partner, Milan
Tel: +39 02 88 393 5218
andrea.arosio@linklaters.com



Giulio Farolfi
Managing Associate, Milan
Tel: +39 02 88 393 5458
giulio.farolfi@linklaters.com



Anna Ferraresso
Counsel, Milan
Tel: +39 02 88 393 5257
anna.ferraresso@linklaters.com



Ugo Orsini
Partner, Milan
Tel: +39 02 88 393 5244
ugo.orsini@linklaters.com



Alessandro Tanno
Managing Associate, Milan
Tel: +39 02 88 393 5264
alessandro.tanno@linklaters.com

Contacts

Japan



Hiroto Nakayama
Managing Associate, Tokyo
Tel: +81 3 6212 1240
hiroto.nakayama@linklaters.com



Eriko Sakata
Partner, Tokyo
Tel: +81 3 6212 1243
eriko.sakata@linklaters.com

Latin America



Manuel Eyzaguirre
Foreign Attorney, New York
Tel: +1 212 903 9051
manueljose.eyzaguirre@linklaters.com



Alejandro Gordano
Counsel, New York
Tel: +1 212 903 9364
alejandro.gordano@linklaters.com



Mario Lercari
Foreign Attorney, New York
Tel: +1 212 903 9194
mario.lercari@linklaters.com

Luxembourg



Nicolas Gauzes
Partner, Luxembourg
Tel: +352 2608 8284
nicolas.gauzes@linklaters.com



Raoul Heinen
Managing Associate, Luxembourg
Tel: +352 2608 8331
raoul.heinen@linklaters.com



Nicki Kayser
Partner, Luxembourg
Tel: +352 2608 8235
nicki.kayser@linklaters.com



Hannah Peters
Junior Associate, Luxembourg
Tel: +352 2608 8267
hannah.peters@linklaters.com

Mexico



Alberto García Linera
Head of Linklaters Mexico Group,
Mexico City
Tel: +52 55 6222 3832
alberto.garcia_linera@linklaters.com



Adrián López G.
Partner, Mexico City
(Nader Hayayx & Goebel)
Tel: +52 55 4170 3058
alopez@nhg.com.mx

Contacts

PRC



Hansen Ji
Managing Associate, Shanghai
Tel: +86 10 6535 0426
hansen.ji@linklaterszs.com



Xi Liao
Partner, Shanghai
Tel: +86 10 6535 0694
xi.liao@linklaterszs.com



Colette Pan
Partner, Shanghai
Tel: +86 21 2891 1868
colette.pan@linklaterszs.com



Alex Roberts
Counsel, Shanghai
Tel: +86 21 2891 1842
alex.roberts@linklaters.com

Singapore



Niranjan Arasaratnam
Partner, Singapore
Tel: +65 6692 5858
niranjan.arasaratnam@linklaters.com



Peiying Chua Heikes
Partner, Singapore
Tel: +65 6692 5869
peiying.chua@linklaters.com



Adrian Fisher
Partner, Singapore
Tel: +65 6692 5856
adrian.fisher@linklaters.com



Jonathan Horan
Partner, Singapore
Tel: +65 6692 5702
jonathan.horan@linklaters.com



Anil Shergill
Managing Associate, Singapore
Tel: +65 6692 5799
anil.shergill@linklaters.com

Spain



Jorge Alegre
Partner, Madrid
Tel: +34 91 399 6177
jorge.alegre@linklaters.com



Gonzalo Diaz
Managing Associate, Madrid
Tel: +34 91 399 6103
gonzalo.diaz@linklaters.com



Paloma Fierro
Partner, Madrid
Tel: +34 91 399 6054
paloma.fierro@linklaters.com



Yiannis Kyriakides
Managing Associate, Madrid
Tel: +34 91 399 6055
yiannis.kyriakides@linklaters.com



Ceyhun Pehlivan
Managing Associate, Madrid
Tel: +34 91 399 6182
ceyhun.pehlivan@linklaters.com

Sweden



Patrik Björklund
Partner, Stockholm
Tel: +46 8 665 41 30
patrik.bjorklund@linklaters.com



Elisabet Lundgren
Partner, Stockholm
Tel: +46 8 665 67 77
elisabet.lundgren@linklaters.com



Alex Stenning
Managing Associate, Stockholm
Tel: +46 8 665 67 14
alex.stenning@linklaters.com

Contacts

UAE



Reem Alsayegh
Partner, Dubai
Tel: +971 4 369 5852
reem.alsayegh@linklaters.com



Nicholas Edwards
Partner, Abu Dhabi
Tel: +971 2 659 2124
nicholas.edwards@linklaters.com



Nick Roudev
Counsel, Dubai
Tel: +971 4 369 5807
nick.roudev@linklaters.com

UK



Julian Cunningham-Day
Partner, London
Tel: +44 20 7456 4048
julian.cunningham-day@linklaters.com



Harry Eddis
Partner, London
Tel: +44 20 7456 3724
harry.eddis@linklaters.com



Fionnghuala Griggs
Partner, London
Tel: +44 20 7456 2595
fionnghuala.griggs@linklaters.com



Richard Hay
Counsel, London
Tel: +44 20 7456 2684
richard.hay@linklaters.com



Michael Voisin
Partner, London
Tel: +44 20 7456 4606
michael.voisin@linklaters.com

U.S.



Jonathan Ching
Partner, New York
Tel: +1 212 903 9170
jonathan.ching@linklaters.com



Doug Donahue
Partner, New York
Tel: +1 212 903 9222
douglas.donahue@linklaters.com



Ieuan Jolly
Partner, New York
Tel: +1 212 903 9574
ieuan.jolly@linklaters.com



Joshua Ashley Klayman
Senior Counsel, New York
Tel: +1 212 903 9047
joshua.klayman@linklaters.com



Oscar Saunders
Counsel, New York
Tel: +1 212 903 9164
oscar.saunders@linklaters.com

Contributors

Jennifer Calver
Senior Associate (Knowledge), Tech Sector and Fintech, *London*

Yong En
Associate, Financial Regulation, *Singapore*

Kathrin Hafner
Managing Associate (Knowledge), Financial Regulation, *Frankfurt*

Mandy Ho
Paralegal, Financial Regulation, *Singapore*

Sophia Le Vesconte
Senior Associate (Knowledge), Fintech, *Paris*

Roger Li
Associate, TMT, *Shanghai*

Jia-Yi Tay
Managing Associate, TMT, *Singapore*

Simon Treacy
Senior Associate (Knowledge), Fintech, *London*

Yian Wei
Associate, Corporate, *Shanghai (Zhao Sheng)*

