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Approaches and developments

From the *Decision of the State Council on Reform of the Financial System* (有关金融体制改革的决定) promulgated by the State Council of China in 1993, which states the requirement “to accelerate the construction of electronic finance and popularize the application and development of computers”, to *Some Opinions on Promoting Combination of Science and Technology with Finance to Speed up Implementation of Independent Innovation Strategies* (关于促进科技和金融结合加快实施自主创新战略的若干意见) issued jointly by the State Administration of Taxation, the Ministry of Finance, the Ministry of Science and Technology, the China Insurance Regulatory Commission (the “CIRC”), the China Banking Regulatory Commission (the “CBRC”), the China Securities Regulatory Commission (the “CSRC”), the State-owned Assets Supervision and Administration Commission of the State Council and the People’s Bank of China (the “PBOC”), which indicates the aim “to fully recognize the importance of the combination of science and technology with financial services”, China has always taken a positive, supportive and encouraging attitude towards FinTech. However, encouragement does not mean no restriction. In the course of its development in China, FinTech is usually restricted by the supervisory policies issued in succession, the promulgation of which means FinTech maintains a strong vitality. In 2019, the PBOC issued *Notice by the People’s Bank of China of Issuing the FinTech Development Plan (2019–2021)* (金融科技 (FinTech) 发展规划 (2019–2021年)) (the “**FinTech Development Plan**”), which not only specifies the guiding ideology, basic principles, development goals, key tasks and supportive measures from 2019–2021, but also indicates that “FinTech is technologically enabled innovation in financial services”.

The development of FinTech has improved the accessibility of financial services, involved more micro- and small-sized entities in financial activities, reduced the concentration of risk and improved the risk pricing, as well as the risk management capabilities through the application of big data, artificial intelligence, etc. However, when providing cross-market, cross-institution, and cross-regional financial services, FinTech will also make the risks inherent in the financial services industry more contagious and spread to a wider area at a higher speed. Therefore, for the purposes of promoting the sound and sustainable development of FinTech, it is necessary to conduct effective supervision accordingly. China used to apply the institutional supervision model on the traditional financial services industry, which now faces challenges along with the integration of the financial services industry brought about by the development of FinTech. The continuous innovation of financial products gradually breaks the business barrier between financial institutions, leading to the formation of cross-market associations and cross-industry linkage characteristics in relation to the operation of the financial market. As FinTech grows rapidly, the importance

of supervision becomes more prominent. The intelligence and technological qualities of FinTech require corresponding governance and supporting mechanisms to ensure the better integration of technology, Internet and finance, which in turn improves the efficiency of financial services.

The year of 2020 was considered a new era of strengthened supervision of FinTech by PRC regulatory authorities. The outbreak of COVID-19 accelerated the digital transformation of the financial services industry and boosted the development of FinTech. In the meantime, issues such as regulatory arbitrage, financial risks, data security and consumer protection have also been fully recognised by regulatory authorities with a number of regulations and rules issued or published for comments.

FinTech offering in China

Although FinTech did not originate in China, the country has seen several years of rapid development and is now one of the countries with the richest variety of FinTech products and the most advanced related technologies.

According to the FinTech Development Plan of August 2019, the official definition of FinTech adopted by the Chinese government is: “Financial innovation driven by technology, which aims to use modern scientific and technological achievements to transform or innovate financial products, business models and business processes, and promote the quality and efficiency of the financial services industry.”

By reference to the definitions of FinTech provided by the Financial Stability Board (“FSB”) and other leading international organisations, and according to the current market practices of the Chinese FinTech industry, the FinTech products currently offered in China mainly include the following categories:

Payment, clearing and settlement

This mainly includes online payment services, offline QR code-based payment services, and the clearing system developed for innovative Internet-based payment services (i.e. NetsUnion Clearing Corporation (网联清算有限公司)).

It is worth noting that the PBOC is currently working on the development of the central bank digital currency and is promoting the launch of pilot programmes in several cities. However, the Chinese government has an extremely conservative attitude towards unofficial digital currency, and explicitly prohibits the issuance, circulation and relating financing activities of unofficial digital currency. It does, however, encourage the utilisation of blockchain technology in the real economy.

Deposits, lending and financing

This mainly includes Internet banking, peer-to-peer (“P2P”) lending information intermediaries, Internet loans (e.g. consumer financing, micro-credit lending, supply chain financing, etc.), loan facilitation services, crowdfunding, etc.

In particular, due to uncontrollable risks and frequently occurring risk events in recent years, P2P and crowdfunding has gradually faded out of the Chinese FinTech market and are no longer the core products in the Chinese FinTech industry. According to the announcement of governmental authorities, all P2P intermediaries have been closed down as of the end of 2020.

Investment management

This mainly includes Internet wealth management, Internet securities, Internet insurance, Internet funds, intelligent investment advisors, etc.

With the rapid development of related technologies such as machine learning, cloud computing and big data, the services related to investment management have been vested with more technical attributes, and have become one of the most popular fields in the Chinese FinTech market.

Underlying technical services

This mainly includes artificial intelligence (such as algorithm models, financing automation, etc.), data application (big data analysis, machine learning, forecasting modelling), distributed accounting technology (blockchain, intelligent contracts), security authentication (user identification, identity authentication), cloud computing, Internet of things, new algorithms (secure multi-party computation, federated learning), etc.

Regulatory and insurance technology

Development of RegTech in China

Compared to in the UK and USA, where RegTech originated, in China RegTech is still in the early stages of development. Many aspects of the application of RegTech have yet to be explored, and greater scope for development is expected in the future.

In respect of regulatory authorities, on 15 May 2017, the PBOC set up the Financial Technology Committee to actively utilise technologies such as big data, artificial intelligence and cloud computing to improve financial regulatory methods, and to enhance the ability to identify, prevent and resolve cross-market risks and strengthen the application and practice of RegTech.

In respect of practices, Chinese financial regulatory agencies are also exploring the application and development of RegTech. For example, the second-generation system of anti-money laundering monitoring and analysis that the PBOC has spent three years developing has been gradually launched in financial institutions since 2019 and the CSRC has gradually begun to use big data analysis technology to find out clues to cases and combat insider trading.

Development of insurance technology in China

The development of insurance technology in China is mainly reflected in the field of insurance sales. In China, the traditional insurance sales model is mainly offline sales, which is usually a one-on-one introduction to the customer by the insurance sales staff. However, with the rapid development of Internet technology, the digitalisation of insurance sales has led the development trend of the insurance industry in recent years. The whole process of insurance, including information consulting, insuring, fee repayment, underwriting, insurance acceptance, insurance information inquiry, preservation change, renewal, claims and payment, is networked through technical means, which not only greatly enhances the convenience of insurance sales and user experience, but also promotes the fast development of the insurance products closely related to e-commerce (such as delay insurance and freight insurance).

In addition to insurance sales, another important application of insurance technology is insurance risk control. Technology companies provide risk scores to insurance companies based on big data analysis and modelling to help improve the risk control ability of insurance companies.

At the end of 2020, the China Banking and Insurance Regulatory Commission (the “CBIRC”, consolidated by CBRC and CIRC) issued the *Measures for the Supervision of Internet Insurance Business* (互联网保险业务监管办法, the “**Insurance Supervision Measures**”) which replaced the outdated interim measures and has become the framework regulatory policy in the field of insurance technology. The new rules take requirements on Internet

insurance contemplated in several other sets of rules issued previously and aim to further regulate non-compliance activities due to the rapid development of insurance technology. In addition, laws and regulations in relation to personal data protection have a significant impact on the application of data in the field of insurance technology.

Regulatory bodies

Similar to the regulatory approaches adopted by most of the countries in the world, China has not set up or appointed an independent supervisory authority for the regulation of the FinTech industry.

Rather, the relevant businesses of the FinTech industry, based on the specific attributes of the corresponding financial services, shall be subject to the supervision of the traditional financial regulatory authorities. In particular: the CBIRC shall be responsible for the supervision of FinTech businesses which rely on services (or similar services) provided by commercial banks (such as Internet banking, Internet lending, P2P lending, etc.) and insurance companies (such as Internet insurance); the CSRC shall be responsible for the supervision of FinTech businesses which are related to investments in the securities markets, such as Internet funds, Internet securities, intelligent investment advisors, etc.; and the PBOC shall be responsible for the supervision of FinTech businesses related to the issuance, circulation and clearing/settlement of currencies such as third-party payment services, digital currency, etc.

In addition, local governments in China also play an important role in regulating the FinTech industry. For P2P platforms and other “quasi-financial businesses” such as financing leasing, financing guarantee and factoring, traditional financial regulatory authorities (i.e. the CBIRC, CSRC and PBOC) will usually not be directly involved in the regulation, but will delegate the relevant regulatory authority to the local financial regulatory bureaus of local governments.

Following the principle of “separate supervision”, the PBOC plays a leading and coordinating role among the regulatory authorities in the supervision of the FinTech industry, and will control the development direction and supervisory approaches of the FinTech industry from a more macroscopic perspective. For instance, *The Guiding Opinions on Promoting the Healthy Development of Internet Finance* (关于促进互联网金融健康发展的指导意见) (the “**Internet Finance Development Opinions**”) issued in July 2015 by 10 ministries led by the PBOC, as well as the FinTech Development Plan as mentioned above, both provide macro guiding opinions on the regulation and development of the FinTech industry based on market practice at the moment.

Key regulations and regulatory approaches

In order to regulate the development and application of FinTech in the financial services industry, the Chinese government has issued a series of policies and regulations in recent years. The basic principle is that FinTech shall be used as a technical tool to promote the innovation and development of the financial services industry. The relevant policies and regulations mainly include the macro policies and the regulations for each subdivided field of the FinTech industry.

Major macro policies

As mentioned above, the PBOC is responsible for leading the formulation of FinTech’s macro policies in China, which are intended to provide guidelines and plans for the development of FinTech:

- *The Internet Finance Development Opinions.*
- *The 13th Five-Year Development Plan for Information Technology in the Chinese Financial Industry* (中国金融业信息技术“十三五”发展规划) issued by the PBOC in June 2017.
- The FinTech Development Plan.

Major regulations in subdivided fields

The Chinese government has attached great importance to emerging technologies, especially for “Cloud Computing”, “Internet Plus”, “Big Data” and “Artificial Intelligence”. For each of the aforementioned technologies, the State Council has issued the corresponding policies of guidance, mainly including:

- *Opinions of the State Council on Promoting the Innovative Development of Cloud Computing and Cultivating New Business Forms of the Information Industry* (国务院 关于促进云计算创新发展培育信息产业新业态的意见) issued by the State Council in January 2015.
- *Guiding Opinions of the State Council on Vigorously Advancing the “Internet Plus” Action* (国务院关于积极推进“互联网+”行动的指导意见) issued by the State Council in July 2015.
- *Notice of the State Council on Issuing the Action Outline for Promoting the Development of Big Data* (国务院关于印发促进大数据发展行动纲要的通知) issued by the State Council in August 2015.
- *Notice of the State Council on Issuing the Development Plan on the New Generation of Artificial Intelligence* (国务院关于印发新一代人工智能发展规划的通知) issued by the State Council in July 2017.

With respect to the application of FinTech in the financial services industry, the Chinese financial regulatory authorities issued a series of rules which can be generally divided into three categories:

- *The regulations in relation to the new business model developed by traditional financial institutions with FinTech*
For example: (1) for Internet insurance businesses based on “Internet Plus”, the CBIRC issued the *Insurance Supervision Measures* in December 2020, which replaced the outdated interim measures; and (2) for Internet loans of commercial banks, the CBIRC issued the *Interim Measures for the Administration of Internet Loans of Commercial Banks* (商业银行互联网贷款管理暂行办法) in July 2020 and the *Notice on Further Regulating Internet Loan Business of Commercial Banks* (关于进一步规范商业银行互联网贷款业务的通知) in February 2021.
- *The regulations in relation to the new types of institutions utilising FinTech*
For example: (1) for non-banking payment institutions, the PBOC promulgated the *Administrative Measures for the Payment Services Provided by Non-financial Institutions* (非金融机构支付服务管理办法) in June 2010 and a series of rules and regulations regarding the payment services provided by non-financial institutions were issued later. In January 2021, the PBOC further issued the *Regulations on Non-banking Payment Institutions (Draft for Comment)* (非银行支付机构条例 (征求意见稿)), which has fundamentally changed the regulatory approaches applicable to the third-party payment industry, and may exert huge influence on the market when it takes effect in the future; (2) for online lending information intermediary institutions, i.e. P2P platforms, four Chinese government departments led by the CBRC (replaced by the CBIRC in April 2018) promulgated the *Interim Measures for the Administration of the Business Activities of Online Lending Information Intermediary Institutions*

(网络借贷信息中介机构业务活动管理暂行办法) in August 2016 and a series of rules and regulations for rectifying such industry were issued later; and (3) for micro-credit companies conducting online micro-credit businesses, the CBIRC and the PBOC announced they were seeking comments on the *Interim Administrative Measures for Online Micro-credit Business (Draft for Comment)* (网络小额贷款业务管理暂行办法 (征求意见稿)) in November 2020.

- *The regulations in relation to the common issues arising from the application of FinTech* For example: (1) for the data management of commercial banks, the CBIRC issued the *Guidelines for the Data Management of Banking Financial Institutions* (银行业金融机构数据治理指引) in May 2018; and (2) for the protection of personal information, the Standing Committee of the National People's Congress promulgated the *Cybersecurity Law of the People's Republic of China* (中华人民共和国网络安全法) in November 2016, the PBOC issued the *Personal Financial Information Protection Technical Specification* (个人金融信息保护技术规范) in February 2020, and the Standing Committee of the National People's Congress also published the *Personal Information Protection Law (Second Draft for Review)* (个人信息保护法 (草案二次审议稿)) and the *Data Security Law (Second Draft for Review)* 数据安全法 (草案二次审议稿) in April 2021.

In addition to the laws and regulations listed above, the Chinese financial regulatory authorities have also promulgated a lot of rules on some aspects of financial services, including online fund sales businesses, loan facilitation services, Internet wealth management and digital currency.

It is worth noting that the PBOC issued a notice in December 2019, announcing that the first pilot scheme of financial technology innovation supervision (i.e. the sandbox regulatory mechanism) will be launched in Beijing (北京). In April 2020, it was announced that the pilot scheme had been expanded to six regions including Shanghai (上海), Chongqing (重庆), Shenzhen (深圳), Hebei Xiong'an New District (河北雄安新区), Hangzhou (杭州) and Suzhou (苏州).

Meanwhile, in April 2020, four Chinese government departments led by the PBOC issued *Opinions on Financial Support for the Construction of the Guangdong-Hong Kong-Macao Greater Bay Area* (关于金融支持粤港澳大湾区建设的意见) in which the mechanism "to study and establish a cross-border financial innovation regulatory 'sandbox'" was proposed, and it is also the first time that the concept of "sandbox regulation" has been directly stated in the Chinese financial regulatory rules. Correspondingly, the *Implementing Rules of the Cross-boundary Wealth Management Connect Pilot Program in Guangdong-Hong Kong-Macao Greater Bay Area (Draft for Comment)* (粤港澳大湾区“跨境理财通”业务试点实施细则(征求意见稿)) was issued recently, allowing residents of Guangdong-Hong Kong-Macao Greater Bay Area to invest in eligible wealth management products through the connect programme.

Restrictions

Apart from prohibiting the issuance and trading of unofficial digital currencies and the establishment and operation of digital currency trading exchanges, the Chinese financial regulatory authorities have not set up any other strict prohibition regulations in the FinTech industry. For FinTech companies conducting financial services business, the regulatory authorities have set up a bottom line that such companies shall obtain the corresponding financial licences. For technology companies that do not conduct any financial business directly, the current regulatory requirements mainly come from the technical standards and data application specifications.

Another notable trend is that regulators will tighten supervision over large-scale internet platforms, putting forward specific requirements on financial business, corporate governance, fair competition and antitrust, consumer rights and data protection, risk prevention and control, etc. It is predicted that the regulator will further step up investigations into large-scale Internet platforms and require them to rectify their incompliance.

Cross-border business

The Chinese financial regulatory authorities take the view that if the cross-border service is a pure technology service, there are no special financial regulatory restrictions; however, if the service has financial attributes, or the service provider provides financial services in one country to natural persons or enterprises in another country through the Internet, namely in the form of the “cross-border supply” model under the framework of the World Trade Organization (the “WTO”), it shall be limited to the following financial areas that China promised to open up to foreign countries in a positive list when joining the WTO in 2001:

- Insurance services, including: reinsurance; international marine, aviation, and transport insurance; and brokerage for large-scale commercial risks, international marine, aviation, and transport insurance, and reinsurance.
- Securities services, for instance: foreign securities institutions may engage directly (without a Chinese intermediary) in B-share business.
- Financial information data services, including: provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and advisory, intermediation and other auxiliary financial services on all activities listed in *The Schedule of Specific Commitments on Trade in Services* (服务贸易具体承诺减让表), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

Except for the abovementioned financial areas, as it is difficult for Chinese regulatory authorities to supervise overseas institutions, and adopting an overly open attitude may inevitably impact financial safety, Chinese regulatory authorities have adopted a very cautious regulatory attitude towards the provision of financial services in the manner of the “cross-border supply” model, and it is required that in principle any foreign institutions providing financial services to natural persons or enterprises within China through any technological means should obtain the corresponding financial licences issued by the Chinese financial regulatory authorities.

* * *

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