

UNCHARTED BEYOND

The Taxonomy of FinTech in the Philippines



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FinTech Alliance Philippines

fintechalliance.ph

For the one who ignited our collective passion and commitment towards accelerating financial inclusion and digital transformation...

For the champion of the unbanked and underserved Filipinos...

Bangko Sentral ng Pilipinas Governor Nestor A. Espenilla, Jr. (1958-2019)



FOREWORD



This collaboration is one of Governor Espenilla's last initiatives. Together with his many achievements in the banking industry, this book will forever carry his legacy.

FinTech in the Philippines is a largely unexplored space—and yet, it continues to expand. As in the wilderness, understanding the residing entities and how they act is key to survival. This book, "UNCHARTED BEYOND,"

serves as your "jungle handbook." In the same way scientists have developed a hardworking nomenclature to make better sense of our world, we propose our own FinTech taxonomy. We want to help both the players and the public navigate the industry's twists and turns.

There's an ideal within the ever-dynamic FinTech landsape: Regulation following innovation. For the most part, our enabling regulations have proven advanced compared to most international equivalents. But there's always room for improvement. This publication thoroughly assesses the regulatory landscape and classifies FinTech based on Professor Matthias Eickhoff's proposed taxonomy process. He identifies six dimensions in classifying FinTechs: 1) dominant technology component,2) value proposition, 3) delivery channel, 4) customers, 5) revenue stream, and 6) product or service offered.

Delving deeper, we also introduce five FinTech categories in the Philippines. These are 1) payments and remittance services, 2) crowdfunding, 3) lending platforms, 4) alternative trading venue, and 5) insurance and asset management.

I am thankful for having like-minded leaders within FinTechAlliance.ph. Each one is dedicated to creating a robust yet dynamic FinTech industry. We continue to look forward to more collaborative projects with our regulators, policy makers, legislators, development agencies, and other stakeholders.

Here's to working towards an inclusive digital economy.

LITO VILLANUEVA

Chairman FinTechAlliance.ph

ACKOWLEDEGMENT

I hope that you find this labor of love useful. To our Chairman Lito Villanueava, who painstakingiy edited the entire document and provided the overall guidance and leadership in the swift delivery and execution of this pioneering contribution to the industry. To our Advisory Board members, research team (Digital Freedom Network), and I who endeavored to produce an extensive and exhaustive reference material for the years to come.

For those already in the industry, may this help you get a better grasp of the regulations that govern your space.

For our regulators, may this help guide your efforts to support FinTech and financial inclusion.

For the uninitiated, may this be an effective primer to the industry and inspire you to participate.

IAN ESTRADAProject Director

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My warmest greetings to FinTech Alliance. ph as it publishes the Philippines' first FinTech Regulation Taxonomy and hosts the FinTech Summit.

Since its inception in 2017, the industry group has gathered various stakeholders in making our digital finance space more robust and competitive. It has fostered a sustainable ecosystemwhere strategic players can pursue their financial endeavors and contribute to our growing economy.

I welcome this taxonomy that will aid enterprises and authorities in aggregating business models into logical categories for more effective regulations in the market. I trust that this material will promote consistency and better understanding of terms and trends in this specialized finance sector.

It is my hope that this publication is just the first of the many strategies you will adopt as we strengthen our efforts towards bringing about a more dynamic and thriving society. Let us work together as we forge a more inclusive and prosperous future for all.

I wish you all the best.

RODRIGO ROA DUTERTE

MANILA

February 2019



SENATE



My heartfelt felicitations to FINTECH Alliance for the publication of the Philippines' First Taxonomy of FinTechs.

As your aim to create opportunities through building an inclusive digital finance ecosystem, simultaneously you will be forced into innovative frontiers that only those willing to win the next generations of players will take on without complaint. The key is innovation and regulation. Only by adapting to the changes happening all around us will we be assured and secured that your industry as we know it today will continue to flourish even as it crafts and develops new channels to support it.

The taxonomy should provide anticipation, security and serve as an impetus to all of you to not only to

establish the much-needed regulatory measures but to ensure that you adapt them to our country's unique needs.

This period may be marked by unprecedented uncertainty, but it also bears the hallmarks of growth, growth, and more growth. This should excite all of you.

Congratulations and Mabubay kayong lahat!

VICENTE C. SOTTO III

Senate President





Congratulations to the companies comprising the FINTECH Alliance and their partners for embarking on a project that promises improved financial inclusiveness for our countrymen: a regulation taxonomy of matters involving digital finance.

The steady advancement of technology has spawned several products and services that cannot be fully accessed using our traditional financial system. Many processes of transacting the business unheard of two decades ago are now commonplace, while many other financial processes are being

introduced to our people. These innovations not only tend to exclude the technologically-challenged among our countrymen but also put pressure on government's efforts to regulate our financial system. A clear system of classifying digital products, services, ang other similar concerns, is urgently needed at this point to define new concepts not included in our traditional system, avoid overlaps in regulations, delineate responsibilities of regulatory agencies, improve coordination among these

agencies when neccessary, and on the whole, make our financial regulatory regime more efficient. This commendable taxonomy project launched by FinTech Alliance will be a boon to both regulators and users of the products and services created by new technologies.

As I laud FinTech Alliance for foreseeing a solution to a shortcoming that can weaken our present financial system, may I also remind this association to consider that many among our countrymen are still technologically-deficient. I urge FinTech Alliance to embark on a financial literacy campaign emphasizing technological tools and intruments to educate all of our people on the advantages of a technologically-enhanced financial system. Only when we have provided every Filipino with some measure of technological finance literacy can we claim that digital finance makes our financial system inclusive.

Best wishes for a very successful launch and *mabuhay*!

Alcria Macapagal-Arrayo GLORIA MACAPAGAL-ARROYO Speaker





Fostering responsible fintech innovation remains to be a strategic priority for the BSP in line with our vision for a responsive, efficient and inclusive financial system. The BSP recognizes that fintech innovations, if harnessed prudently, can unlock financial inclusion barriers, promote transformational enhancements and provide exciting opportunities for the financial services industry.

Harnessing fintech developments while managing associated risks, however, is easier said than done. The fintech landscape has

increasingly become complex, borderless and fast- evolving. It encompasses a broad spectrum of emerging technologies, new business models and fintech players, most of which are not within BSP's traditional supervisory radar. Distinction as to nature, features and mechanics across these technologies is often not discernible. Conflicting concepts such as big data vs. artificial intelligence, machine learning vs. data science, FinTech vs. TechFin, cryptocurrency vs. crypto-assets, among many others, continue to be a source of confusion among regulators, industry players and affected stakeholders.

The need to have a baseline understanding of these fintech developments cannot be overemphasized. The BSP therefore extends its warmest compliments to FinTechAlliance.ph for taking the lead in the publication of the first taxonomY for fintechs. Through this taxonomy, financial regulators would be able to formulate consistent and harmonized supervisory and regulatory responses that are tailored to the specific nature, complexity and risks of a particular fintech innovation. It also serves as a common ground that facilitates meaningful discussions among financial regulators and industry players to drive the fintech agenda forward.

The BSP hopes that this taxonomy serves its purpose as a gateway to greater collaboration and cooperation to maximize FinTech's full potential that can uplift the lives of the Filipino people.

Menten Ennille gr NESTOR A. ESPENILIA, JR

Governor





Financing is one of the biggest challenges facing Filipino entrepreneurs, especially microentrepreneurs like sari-sari store owners and market vendors who resort to high-interest and onerous loans to expand their business. These barriers to access to financing stunt the growth of Micro, Small, and Medium Entrepreneurs (MSMEs) that serve as the economic backbone of the Philippines.

The Duterte administration, through the Department of Trade and Industry (DTI), set out to address this issue through the Pondo sa Pagbabago at Pag-asenso Program (P3).

Since it began in 2017, the program has already lent out Php 2.4 billion through the support of the Small Business Corporation and partner microfinance institutions in giving out loans with a maximum interest rate of 2.5% with no monthly collateral. These loans have helped recipients like a fruit-seller from Sarangani Province to expand her business, or a widow of a soldier who died during the battle of Marawi to support her family and herself through a sari-sari store.

But providing traditional financing is just one solution to this problem. We decided to embrace innovation and tap financial technology (fintech) partners like First Circle and FINTQ to provide MSMEs with technological solutions to the barriers of financial access. Both companies are also members of FinTechAlliance.ph, an organization of digital finance companies operating in the Philippines.

DTI lauds the efforts of FinTechAlliance.ph in publishing the country's first fintech regulation taxonomy, which provides a consistent vocabulary for modelling all relevant actors, objects, and processes are subject to regulation in the developing fintech industry. As users and promoters of fintech, DTI understands the need for a taxonomy catering to this new technology. Thus, we thank the FinTechAlliance.ph for taking this initiative, which will guide and inform the government, fintech companies, and borrowers in this ecosystem.

With this and other initiatives from FintechAlliance.ph, we are confident that we will achieve our shared goal of creating inclusive growth and a comfortable life for all Filipinos, especially those at the bottom of the pyramid.

Thank you and mabuhay!

RAMON M.LOPEZ

Secretary





My warmest greetings to the FinTech Alliance Philippines for the publication of the country's first Fintech Regulation Taxonomy!

Publishing the Philippines' first taxonomy of Financial Technology can help attain cooperation, stimulate innovation and promote the growth of the digital finance industry in the Philippines.

I commend this project as a primary step in forging a common language and a standard system that will set the parameters and basis for the effective communication of all actors and stakeholders for the proper regulation, growth and development of the industry.

This initiative can incite the development of more domestic online services such as online payments and purchases, online banking, crowd funding through social media, Peer to Peer (PTP) loans and investments through local online platforms.

Believing that this will hasten government transactions by providing ease in business, the Department of Transportation advocates the maximization of the financial technology environment.

The online payment system for new vehicle registration of the Land Transportation Office, MARINA's online appointment and payment system for the Seafarer's Identification and Record Book, and the E-Payment System of the Philippine Ports Authority are just some of the many projects within the realm of financial technology.

As we move forward in this digital age, we shall continue to leverage on and harness the power of information technology to drive our services towards making Filipino lives better and comfortable.

Again, my warmest congratulations!

ARTHUR P. TUGADE

Secretary

Department of Transportation



REPUBLIC OF THE PHILIPPINES

DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY



The rapid adoption of technology among Filipinos has caused massive changes in the landscapes of both business and public service. As telecommunications advanced from voice to data, people have been swift in developing and utilizing new modes in trade. For many average citizens, face-to-face physical exchanges quickly turned into automated digital transactions.

At the center of these developments in trade and finance are the matters of public convenience, security, and efficiency. In pursuit of the best state for each area of concern, the government, in collaboration

with related entities, must start revisiting existing laws, policies and regulations connected to financial technologies. It is with utmost importance to study whether certain policies should be carried over, changed or discarded altogether - all in the effort to synergize the diverse industry.

But even before these decisive actions, it is imperative that all actors, regulators, policymakers, stakeholders and clients alike, are aligned in their understanding of the complex ecosystem, to which definitions of terminologies, categories and divisions

on jurisdictions of each concerned agency should be agreed upon by all.

The Department of Information and Communications Technology (DICT), in its recognition of this monumental task, commends the FintechAlliance.ph for the development of the Philippines' First Taxonomy of FinTechs, a stride forward in realizing an !CT-enabled financial ecosystem.

This publication codifies the demand of a digital economy - an exemplary initiative to trailblaze this unchartered territory. It also provides an executive view of the challenges of this dynamic industry and how telecommunications magnify the economic opportunities of the nation. May this be a testament to the effectiveness of multi-sectoral collaboration as it serves as a guide in navigating the way to the future of financial technology in the Philippines.

Congratulations to the FintechAlliance.ph!

ELISEO M. RIO, JR.

Acting Secretary



We are currently in an era where processes and transactions are more effective and efficient through the help of digitalization which creates great impact to the lives of many Filipinos today. The digital transformation that we are experiencing today helps achieve the goal of the inclusive growth and development as it provides different platforms for various causes.

Digital platforms are indeed gamechangers as they provide wider access to different opportunities for growth and development. Through these digital service platforms and innovations, our community is provided with platforms which actually empowers more Filipinos to become self-earning entrepreneurs. Our micro, small and medium entrepreneurs (MSMEs) also benefit from the digitalization as they are exposed to online platforms for mentorship, money and market.

As Fintech Alliance leads the digital finance space, I am confident that more and more Filipinos will have easier access to more financial programs, supports and loans. We look forward to collaborating with them as we provide programs for MSME development focused on money and eventually contributing to the goal of financial inclusivity in the country.

JOSE MA. A. CONCEPCION III

Presidential Adviser for Entrepreneurship **Go Negosyo Founder**





I would like to extend my heartfelt congratulations to Fintech Alliance.ph and its alliance members for the successful publication of the first Fintech Regulation Taxonomy in the Philippines.

As the administrator of company registration and information systems and the overseer of the capital market, the Securities and Exchange Commission highly recognizes the potential of Financial Technology in disrupting the traditional way of providing financial services as well as the role of tomorrow's Fintech innovations in improving the efficiency and stability of our current

financial service system, promoting financial inclusion, and empowering the Philippines as one of the most promising developing economies in the world.

This publication would provide excellent guidance to legislators in performing their duty of enacting future Fintech legislation and as well as to regulators in the drafting of rules and regulations applicable to Fintech companies. The Alliance's initiative serves to minimize misunderstanding and unite

all the stakeholders' understanding of highly complicated technical concepts, ideas and terms leading to a more fruitful discussion between the government and the private sector.

Through the enactment of Fintech laws, rules and regulations, we welcome everyone who wishes to invest, build and develop their technologies and innovations here in the Philippines as we aspire to make the country the most Fintech-friendly country in the world.

As a strong advocate of the adoption of technology in the rendition of financial services, I firmly believe that the Fintech revolution, through the initiative, hardwork and dedication of the public and private sectors including the Fintech Alliance, would serve as a catalyst and a major driving force which would eventually shape and evolve the future landscape of financial and capital markets leading to a more technologically advanced and ideal market of tomorrow.

Mabuhay tayong lahat!

EMILIO B. AQUINO

Chairman

Securities and Exchange Commission





Financial Technology has grown in a way unimagined in scope and breadth, catching many of us quite unprepared for all the trappings that go with it.

We are grateful that the Insurance Commission has found a partner in FinTechAlliance.ph, which is dedicated to harnessing the collective strength of its member-allies from the digital finance space to contribute to the country's economic and social development. Not only does FinTechAlliance.ph support our financial inclusion's efforts by making the financial transactions more convenient, efficient and inclusive, but today, it has taken the financial technology sector one step forward by publishing the Philippines' First Taxonomy of Fintechs.

As Regulator of the financial industries Life and Non-Life Insurance, Mutual Benefit Associations (MBAs), Pre-Need, and Health Maintenance Associations (HMOs), the Insurance Commission stands to benefit from the said publication. We expect that it would help us better understand other products in the financial market, know their regulations, and give us insights on how we may align with their policies, and improve on our own, for a more enabling and vibrant constituency.

To FinTechAlliance.ph, congratulations on the launch of your first major venture as a team. With the counting digitalization of almost everything under the sun, we are happy that we have your Alliance supporting us. Be assured of the Commission's abiding support on your endeavors.

DENNIS B. FUNA Insurance Commissioner





As the country's financial ecosystem inevitably fuses with the cyber realm, the FinTechAlliance.ph publication of the Philippines' First Taxonomy of FinTechs serves as a milepost in a country where a distinct legal regime for financial technology is lacking. This taxonomy intends to update traditional concepts, rendering them more applicable and appropriate for new technology.

The Anti-Money Laundering Council (AMLC) and its Secretariat recognize the importance of financial technology,

especially in the financial inclusion efforts of the government, and we maintain a vigilant stance on its potential use for money laundering and terrorism financing.

The AMLC's study on virtual currencies, for instance, notes that their use has grown since 2014, averaging \$36.74 million per month and hitting \$38.27 million in the last quarter of 2017. This notwithstanding, with the coverage of virtual currency exchanges within the

ambit of the Anti-Money Laundering Act, as amended, we have the Bangko Sentral ng Pilipinas and the AMLC monitoring their anti-money laundering and countering the financing of terrorism compliance. Moreover, in 2018, the AMLC adopted the Guidelines on Digitization of Customer Records (DIGICUR), putting Philippine covered persons at par with global financial institutions, where compliance officers are able to perform swift and effective analysis and monitoring through digital means.

The AMLC joins FinTechAlliance.ph in the country's push to develop enabling regulations that encourages the progress of financial technology and its awareness. With the Philippine economy growing among the fastest in Asia, this publication provides an additional impetus for the economy to be more competitive globally, as the Philippine financial system delves deeply into the digital world.

MEL GEORGIE B. RACELA

Executive Director

Anti-Money Laundering Council Secretariat





Congratulations to FinTechAlliance.ph for initiating and organizing this group of strategic players in the emerging digital finance industry which aims to collaborate and collectively contribute to the growth of the sector and maximize its potential to influence and engage relevant stakeholders.

The National Privacy Commission (NPC) commends the pilot project of FinTechAlliance. ph to publish the Philippines' First Taxonomy of FinTechs to standardize business models, harmonize terms and norms, and establish key concepts vital to the operations of the industry.

Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012 (DPA), mandates all personal information controllers and personal information processors to ensure that the processing of personal information of data subjects are in accordance with the law, particularly, the data privacy principles of legitimate purpose, transparency and proportionality, that security measures are implemented and that the programs and policies of the organization are consistent with the DPA.

As the NPC actively advocates the industry approach to assist entities to comply with this emerging field, this publication will be of great help to us in understanding and interacting with this vital sector.

By clearly discussing and demonstrating the logical categories of business models involved in the digital finance services, regulators, including the NPC, will be enlightened on the nature of operations, scope of their jurisdiction, and in turn, determine appropriate and responsive regulations.

Indeed, processing of personal information to facilitate transactions is the heart and soul of digital finance. Trust is crucial in sustaining the business, and this can only be achieved when the clients, as data subjects, have reached a level of satisfaction with the data privacy policies and practices of entities involved in the chain of operations. Data privacy and security measures should be considered as the default and embedded throughout the data lifecycle.

Pursuant to its mandate, the NPC shal continuously champion data privacy in the Philippines, build the capacity of every Filipino in accordance with global standards, and empower data subjects to exercise their rights.

The NPC commits to support FinTechAlliance.ph in its campaigns and programs, and is looking forward to succeeding publications to guide not only the policy makers, regulators and players, but most omportantly, the public.







FinTech has been creating a buzz in the financial industry for quite some time in the Philippines with its promising future of a sustainable banking system through the use of technology. Especially in today's context where technology is being utilized in almost all aspects of living, FinTech has been considered a global game changer, notably in the Philippines and its quest for true financial inclusion.

FinTech's capability to create innovative approaches through the use of technology has transformed how the financial industry is perceived. However, a synchronized collaboration, particularly with the banking and

other formal lending systems, needs to exist in order to exponentially expand the market for lending services all over the country while developing a more productive and long lasting relationship with borrowers.

A well-managed FinTech Alliance will serve two main purposes, one is to suitably contextualize the FinTech processes and services so that it can be properly situated in the financial service industry frameworks and roadmaps. By doing so, expectations can be managed and a true spirit of competition and collaboration can seamlessly exist where possible. The other is to act as a filter for bad

actors and inappropriate methodologies that might ride the wave of promise and enthusiasm for FinTech and hamper, if not entirely negate, the potential benefits of a technology driven industry in its nascent stages.

As a government-owned and-controlled corporation that utilizes technology in providing consumers the most reliable and comprehensive credit report, the CIC is being made aware of the technological and regulatory gaps that may challenge good ideas from reaching fruition. An organized, consolidated, and well-framed approach of something such as the FinTech Alliance, primarily composed of CIC's covered entities, will give the FinTechs credentials as an industry and have the type of representation, through its membership and data it generates, that can effectively make its case in legal and regulatory spaces.

Depending on the appetite of almost every financial service provider, there is likely to be a corresponding flavor of FinTech available.

I would like to congratulate the FinTech Alliance for the 1st Taxonomy of FinTechs. The CIC is one with you in aiming to build and expand sustainable and inclusive digital finance ecosystem and truly believes that FinTech will pave way and serve a better part in the continuous evolution of financing in the Philippines while providing greater and well-tailored access to finance to all deserving Filipinos.

JAIME CASTRO JOSE P. GARCHITORENA

President and CEO



Bank deposit mo, protektado!



Philippine Deposit The Insurance Corporation (PDIC) congratulates FinTechAlliance.ph for its innovative efforts in continuously building and expanding a sustainable and inclusive digital finance ecosystem. to publish the country's initiative first fintech regulation taxonomy to guide policymakers and regulators in developing new regulations for a more responsive financial environment is well appreciated.

We value the use of technology as a transformative tool to reach new markets and to effectively address the needs of the unserved and underserved population. The PDIC shares the goal of financial technology to make financial services accessible to Filipinos in remote areas and to empower them to contribute to economic growth.

The support of FinTechAlliance.ph to the National Government's thrust for financial inclusion by

offering alternative channels for financial transactions to complement the conventional services offered by banks will help financial consumers to fully benefit from an accessible, sustainable, and inclusive financial system.

As an advocate of financial literacy and financial inclusion, PDIC believes that innovation and digital technology are important in creating a financially literate nation. While PDIC provides protection to bank depositors through advocating wise saving, it also recognizes that the first step to become a wise saver is to be financially included. With the innovative efforts of the alliance to increase Filipinos' access to financial services, and by working together, we can cultivate a more inclusive and robust financial community.

Congratulations!

ROBERTO B. TAN
President & CEO





First of all, I would like to congratulate Fintech Alliance Philippines for its timely and significant undertaking, publishing the country's 'First Taxonomy of Fintechs'. Indeed, the financial technology industry has been growing exponentially in the past few years, and it is a must for all stakeholders and industry players to have semantic consensus.

The financial technology or "Fintech" have emerged in 2008, ushered as a new model in alternative financial services as a result of the financial crisis. Fintech was created as a response to a looming crisis. It is driven mainly by technology and caters to what the consumers really need and has been growing in an

exponential rate. Fintech is viewed as a disruptive model that could shake the oligarchical and oppressive financial systems, like banks and other lending institutions which the only goal for existence is to get money from consumers. On the hindsight, it may augment the portfolio of the existing conventional business models to deliver needed services in fast changing pace.

As the Chairman of the Cooperative Development Authority (CDA), with a significantly critical mass, I can say that Fintech is also relevant to the cooperative movement. There are two things needed for Fintech to realize its full potential: Technology and Data - big data. And since the cooperative sector in the Philippines has a critical mass of 14 million from the 28,000 registered cooperatives, it will definitely play a vital role. We have an economy of scale so to speak.

Now, the question really boils down to; who owns, who controls, who profits, and who benefits the system? For me, it is as important as having a common linguistic terms understanding with the technological environment.

It is also true that the coop sector is in dire need to embrace digitalization if it wants to stay alive and competitive in the next decades to come. However, in jumping into the digital world, the coop sector must consider also these questions: is it inclusive? Is it secured? Is it philanthropic? Is it future-proof?

By saying inclusive means all the members of the coop sector can have its part of the pie. Secured means end users of the system (i.e. sender and recipient of money transfer) will not have the burden in case something goes wrong or the system is unbreakable/impenetrable from end to end/terminal to terminal or what they call "cash points", and is backed and/or certified by government.

Philanthropic means it promotes the welfare of others, not exploiting them by imposing usurious rates to end-users. Future-proof means the system should be scalable to whatever business to be engaged in the future.

By following these, the financial technology environment in the philippines will have a tremendous success in the years to come: having a common language and terms among the users and stakeholders of the system and the principles that will serve as the roadmap for a common goal.

Again, congratulations to Fintech Alliance Philippines!

ORLANDO R. RAVANERA, CSEE, CEO VI

Chairman

Cooperative Development Authority

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GLOSSARY OF ACRONYMS

ACH automated clearing house

AMLA	Anti-Money Laundering
BSFI	BSP-Supervised Financial Institution
BSP	Bangko Sentral ng Pilipinas
CDA	Cooperative Development Authority
CDD	customer due diligence
CIC	Credit Information Corporation
CISA	Credit Information System Act
CPA	Cybercrime Prevention Act
DICT	Department of Information and Communications Technology
DPA	Data Privacy Act
DPO	Data Protection Officer
EFT	electronic fund transfer
EMI	electronic money issuer
FX	foreign exchange
FXD	foreign exchange dealer
IC	Insurance Commission
ICO	initial coin offering
ICT	Information and Communications Technology
IRR	Implementing Rules and Regulations
LEA	Law Enforcement Authorities
LTFRB	Land Transportation and Regulatory Board
KYC	Know Your Customer
MC	money changers
ML/TF	money laundering and terrorist financing
MOR-NBFI	Manual of Regulations for Non-Bank Financial Institutions
MSME	micro, small and medium enterprise
MVTS	money or value transfer service
NPC	National Privacy Commission

NPSA National Payments Systems Act

NRA national risk assessment

NRPS National Retail Payments Act

OTC over the counter

PCC Philippine Competition Commission

PESONET Philippine EFT System and Operations Network

PHILID Philippine Identification

PI Personal Information

PISA Philippine Identification System Act

POS point of sale

PPSA Personal Property Security Act

PRC Professional Regulation Commission

PSN PhilSys Number

PTE public telecommunications entity

QR quick response

RA Remittance Agent

RCW Rule on Cybercrime Warrants

RIRR Revised Implementing Rules and Regulations

RPP remittance platform provider

RSA remittance sub agents

RTC Remittance and Transfer Company

SIM subscriber identity module

SPI sensitive personal information

SRC Securities Regulation Code

VC virtual currency

VCE virtual currency exchange

WDCD warrant to disclose computer data

WECD warrant to examine computer data

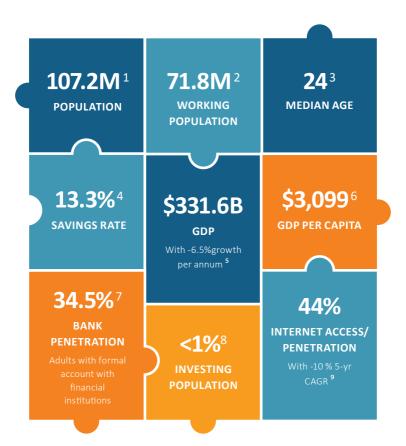
WICD warrant to intercept computer data

WSSECD warrant to search, seize, and examine computer data

INVENTORY OF RELEVANT LAWS

PD 114	Pawnshop Regulation Act
PD 129	Investment House Law
RA 2629	Investment Company Act
RA 5980	Financing Company Act
RA 8367	Revised Non Stock Savings and Loan Association Act
RA 8791	General Banking Law
RA 8792	Electronic Commerce Act
RA 8799	Securities Regulation Code
RA 9160	Anti Money Laundering Act
RA 9474	Lending Company Regulation Act
RA 9510	Credit Information System Act
RA 9829	Pre-Need Code
RA 9856	Real Estate Investment Trust Act
RA 10173	Data Privacy Act
RA 10175	Cybercrime Prevention Act
RA 10607	Insurance Code
RA 10667	Philippine Competition Act
RA 10844	Department of Information and Communications
	Technology Act
RA 11032	Ease of Doing Business and Efficient. Government Service
	Delivery Act
RA 11055	Philippine Identification System Act
RA 11057	Personal Property Security Act
RA 11127	National Payments Systems Act
RA 11202	Mobile Number Portability Act
RA 11211	New Central Bank Act
RA 11232	Revised Corporation Code

THE PHILIPPINES AT A GLANCE



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I.

INTRODUCTION

The Philippines is riding the wave of financial technology (FinTech). These are new digital platforms for performing financial transactions, often leveraging network technology and the ubiquity of mobile devices. FinTech enables new efficiencies and scale, including more affordable and secure financial transactions. More accessible and engaging than traditional modes of delivering financial services, FinTech allows greater financial inclusion and improves access to capital.

⁶ Id.

Financial Inclusion in the Philippines – Dashboard. Bangko Sentral ng Pilipinas. http://www.bsp.gov.ph/downloads/Publications/2018/FIDashboard_1Q2018.pdf

⁸ PSE Academy, "Online stock market accounts grow 28.5 pct in 2017," June 13, 2018, http://www.pseacademy.com.ph/LM/investors~details/id-1528869768285/2017_Stock_Market_Investor_Profile.

⁹ Internet Live Stats, Philippine Internet Users, http://www.internetlivestats.com/internet-users/ philippines/

FINTECH DEFINED

The term "FinTech," or financial technology is yet to have an established meaning in Philippine law. However, policy pronouncements from various agencies have used the term broadly to apply to any "technological development in finance".

The term Fintech applies to financial services that are deployed through the Internet and/or mobile applications. These are usually characterized by more user-friendly interfaces, greater efficiency, transparency, and higher levels of automation than those offered by more traditional institutions.

Financial transactions are an important component of our daily lives. To be sure, the security and reliability of financial platforms will have an impact on the economy and on the public good. The right mix of regulation - one that simultaneously builds trust and unleashes innovation – is required for the country's nascent Fintech sector. Regulation lets the public trust these platforms as the law protects affected individuals against bad actors. At the same time, heavy-handed regulation can negate many of Fintech's advantages - accessibility, availability, speed and efficiency. It may also place the government in the position of shaping the market; calling the industry's winners and losers thereby weakening competition and innovation.

"An industry report puts the number of FinTech startups in the country at 60 players in 2018. Mobile payment and alternative finance firms dominate with 26 and 17 players, respectively. The transaction value of the FinTech market in the Philippines was estimated to amount to US\$5.7 billion in 2018. It is expected to grow at an annual rate of 16.4 percent. By 2022, the FinTech market in the country is projected to surge to US\$10.5 billion." 10

— Former Bangko Sentral ng Pilipinas Governor Governor Nestor A. Espenilla, Jr.

¹⁰ BSP Governor Nestor A. Espenilla, Jr. "Thrive Not Just Survive", speech, 39th National Conference of Employers, http://www.bsp.gov.ph/publications/speeches.asp?ld.=606

A. TECHNOLOGY, DISRUPTION, AND THE LAW

Historically, economic activity is conducted within the possibilities and limitations of a particular technology and the law that covers it. Technology mediates transactions. It provides a venue, coordinates parties, enables a common language, and ideally creates trust. Paper-based financial instruments, such as bills and ledgers, may provide a permanent, more reliable record of transactions, but means of authentication and security are basic.

For its part, the law arises from this technological substrate, defining further constraints at the margin of existing technological capabilities. The law can also smoothen out technological adoption by providing standards, or mitigating externalities. For example, the laws on negotiable instruments provide baseline rules for paper-based to lessen the risk of fraud. The technology of paper and pen together with the legal construct of "negotiability" allowed us to create proxies for trust and facilitate transactions even among strangers. In these cases, the structure and content of the law is still dependent on what the technology enables - the manual delivery of paper documents, the attributes of handwritten endorsements, all figure into the assumptions of the negotiable instruments law. We see that today even in the recent regulations involving checks.

In the case of disruptive technologies, its corresponding benefits cause market incentives to shift. It affects an earlier arrangement structured by the law. Greater technological disruptions bring higher levels of regulatory mechanisms. This leads to a wider regulatory gap that threatens both the development of the technology and the economic gains the broader public can enjoy from it. This is the challenge facing FinTech today.

CAR SHARING AND TRANSPORTATION NETWORKS

The conditions of transport-based applications in the Philippines provide a case study in disruption of incumbents, and its impact on existing laws. The law on public tanportation seeks the following:

- to expand publicly accessible modes of transportation by providing incentives to private capital;
- to ensure a steady supply of one-use vehicles to the general public at the lowest possible price; and
- to protect the general public against the harms they may suffer in such transport modality.

Some concerns a public transportation regulator may face include the following:

- 1. Drivers on duty while intoxicated, violating traffic law, or causing undue harm to passengers.
- 2. Operators unable to fund and deploy enough vehicles to meet public demand.

- 3. Operators who fail to keep the vehicles in good condition.
- 4. Imbalanced routes; either underserved or congested.
- 5. Operators who implement predatory pricing.

However, rich mobile applications and advanced "big data" analytics allow effective monitoring and regulation in private. Even without extensive State apparatus. It has already been demonstrated that a distributed transportation network—such as Grab's—addresses many of the externality concerns through technology.

Each Grab vehicle is associated with a mobile phone that provides location tracking, route computation, and instant feedback. The real-time behavior of a driver (speed, routes taken, trip-status) can be the basis of applying corrective behavior. Drivers who disobey Grab's policies can be suspended or kicked out of the network. All these are tied to an algorithm-enabled incentive system that set prices and match drivers with riders.

The Legal Taxonomy in Financial Industry Regulation

Every regulatory regime relies on a taxonomy – a consistent vocabulary for defining all relevant actors, objects and relevant processes. A taxonomy enables authorities to organize regulatory power. It can be based on the type of activity, actors involved, or impact on specific stakeholders. This allows multiple agencies to coordinate common concerns. A hardworking taxonomy lends context to regulatory regimes.

Currently, the country's regulations come with its own taxonomy. However, these regulations were developed alongside contractual arrangements and institutions that have not seen fundamental changes for decades. With the developments that Fintech will bring, it is uncertain whether this taxonomy can remain relevant.

When confronted with financial innovations, the government tends to assess them against traditional contexts of relevant concepts. This results in inconsistent rules or overlapping jurisdictions. As seen in Grab's case, technology is more than a matchmaker between drivers and riders. It also impacts how economic activity is organized. Surge pricing is a mechanism that cannot be accommodated by existing regulatory structures but can be implemented in the information-rich environment provided by Internet and mobile technologies.

Apart from reflecting price changes brought about by demand shifts, surge pricing incentivizes drivers to provide public transportation when



it is most needed. Famously, the absence of surge pricing caused New York city cabs to be plentiful in clear weather and in short supply as soon as it rains.¹¹

These new arrangements may not always fit neatly with existing legal structures. Simply maintaining the legal *status quo* protects incumbents and disincentivizes innovation.

Annie Lowrey, Why You Can't Get A Taxi When It's Raining, New York Magazine, November 11, 2014, http://nymag.com/daily/intelligencer/2014/11/why-you-cant-get-a-taxi-when-its-raining.html

A REGULATORY MISMATCH?

A lack of foresight spelled disaster for the country's education pre-need market. Mostly made up of new parents, the subscriber base set aside millions in cash to prepare for their children's future.

Unfortunately, the actuarial models for these funds failed to consider tuition increase rate. The market crashed. Hard. Worsened by uncertainties in regulatory authority and institutional competencies. In failing to determine accountability, the industry flatlined before anyone could find a cure.

As pre-need plans were marketed and treated like investments, they were under the purview of the Securities and Exchange Commission (SEC). The committee acknowledged the collapse, in hindsight, as a misallocation of regulatory power. Subsequent legislation later assigned jurisdiction to the Insurance Commission (IC), a body with more experience in dealing with risks along a longer timeline.

B. METHODOLOGY

To better navigate the intersection between technology and the law, clarity is key. This publication sheds light on how the legal and regulatory structures of the local financial sector apply to both established actors and to FinTech services. We reveal through comparative analysis how the law's embedded assumptions about technology only cover the surface of what the industry can offer. With this guide, stakeholders can hopefully avoid pitfalls, craft calibrated rules or propose amendments to existing laws.

Identification of Financial Regulations

As the hub for many financial functions, banks are a primary focus of regulation. Banks are authorized to take deposits, extend loans, maintain trading desks, and underwrite investments. As the consummate financial body, banks serve as the model from which other actors are distinguished against, e.g., non-banks and quasi-banks. Whereas banks consolidate financial transactions, FinTech allows for disaggregation—at scale and with lower entry requirements.

In the traditional set-up, certain arrangements increase transaction costs for both bank and consumer. Take home loans and mortgages for example. Banks are required to maintain a ratio between debts and available capital to minimize systemic risks from loans they extend. As an added layer of protection, lenders must submit extensive documentation or provide collateral.

In contrast, FinTech companies operating within an information-rich environment can provide technological responses to these risks. Advanced

data analytics give a more detailed picture of a prospective lender's credit risk; software automates the enforcement of payment schedules, and reliable identity management and authentication minimizes the likelihood of fraud. All these functions can be bundled in a publicly available application without the overhead of operating multiple bank branches. A FinTech lending platform can therefore provide better risk management through data and software while providing a more efficient market mechanism to match borrowers and lenders. Imposing upon the platform the same requirements for a bank would be redundant and self-defeating.

In the absence of a distinct legal regime for FinTech, regulators may fall back on the norms applied to financial institutions. But issues of fit and consistency arise when taxonomies embodied in old laws are applied to new technologies. Such is the case with Grab.Standardizing terms between FinTech services and their traditional counterparts may provide a short-term solution—however, cross-comparison between their respective taxonomies reveal issues.

These and all similar issues are flagged in every FinTech service that may be subject to the regulations of the traditional financial sector.



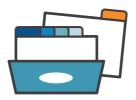
INCONSISTENCY OF TERMS

Similarly-named concepts between FinTech and traditional financial taxonomies may have materially different content (attributes, relationships), e.g., "currency"



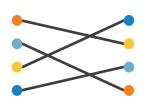
OVERLAPPING JURISDICTIONS OVER SEMANTICALLY SIMILAR CONCEPTS

Conversely, different agencies may regulate activities covered by different terms, such as "insurance" and "credit default swaps", that are similar when it comes to relevant actors, relationships, and processes.



CONCEPTS NOT COVERED BY EXISTING TAXONOMIES

It is also possible for concepts such as "blockchain" and others created by new technologies, not to be accounted for in the traditional taxonomy, or can only be defined in terms of combining previously disparate concepts.



IMPLEMENTATION MISMATCH

Government agencies can only interface with a concept at a particular level of abstraction, leaving some implementation details absent or incompatible with the actual workings of a concept.



POLICY CONFLICT

Norms that may not conform to other policy considerations or constitutional values.

Categories of Financial Regulation. There are two distinct classes of legal norms operating at different levels within the financial sector.

1. COMPLIANCE LAWS

These refer to rules that are not intended to address the market structure for specific financial services. Instead, they impose duties on financial sector actors regardless of the service offered or mode of delivery. Requirements for data privacy or measures against money laundering fall under this category.

2. REGULATORY LAWS

These are rules that shape the market through entry requirements, standards, and incentives. They may constrain activities in specific financial services to fit policy preferences. For instance, it can determine who may engage in the business of lending, or balance the information asymmetry between parties to a loan transaction, or determine allowable rations of debt to capital.

Taxonomy of FinTechs. We aim to lend context to new regulations by recategorizing business models into a FinTech taxonomy.

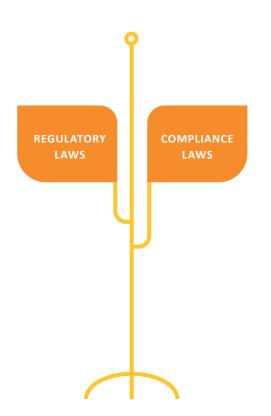
Legal Analysis of Financial Regulations as Applied to FinTech. Regulatory issues are determined by juxtaposing the components and operations of FinTech services against the currently applied norms.

Analysis Questions

- 1. What are the laws and regulations that govern the country's financial industry?
- 2. Who are the actors of the financial sector recognized under the country's laws?
- 3. What are the objects in the financial sector recognized under the country's laws?
- 4. What are the processes in the financial sector recognized under the country's laws?
- 5. What are the norms applicable to the actors, objects, and processes of the traditional (i.e. non FinTech) financial sector?
- 6. What are the categories of FinTech services?
- 7. What laws and regulations are directly applicable to FinTech?
- 8. What laws and regulations for the traditional financial sector are applicable to FinTech?
- 9. What are the potential issues in applying these regulations to FinTech?
- 10. Are there regulatory gaps in unlocking the full potential of FinTechs to drive the country's digital economy?

II.

CURRENT REGULATORY FRAMEWORK



FinTech's success relies on its seamless integration with the local legal landscape. To develop regulations that complement the industry, exploring and understanding the current legal framework is crucial.

The framework can be divided into two categories. The first category, "Regulatory Statutes," covers laws that mandate how particular financial activities must be carried out. These rules

effectively shape the market and determine who the players may be, and what their bounds of conduct are.

The second category is more macro. It covers financial products and services in a broader sense, rather than in relation to a particular set of financial activities. Let's call these "Compliance Laws." Originating from overarching state policies and objectives, Compliance Laws determine rights and duties that cut across different forms of financial activity. This category, for example, includes rules on anti-money laundering.

A. REGULATORY STATUTES

Under the current regime, Congress assigns industries under different administrative agencies for regulation.

In the interest of producing a sizeable—if not exhaustive—enumeration of regulated financial activities, we outline the various types of financial activity regulated by law under the purview of the BSP, the SEC, and the Insurance Commission (IC). These three administrative agencies are the Supervising Authorities contemplated under Republic Act No. 9160 or the Anti-Money Laundering Act (AMLA) 2016 Revised IRR (RIRR). These three agencies are the country's biggest regulators of financial products and services. Below are the entities they supervise—all subject to anti-money laundering regulation.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Bank ¹²	The General Banking Law of 2000 (RA 8791) Manual of Regulations for Banks (MORB)	BSP
Quasi-Bank ¹³	The General Banking Law of 2000 (RA 8791) Lending Company Regulation Act (RA 9474) ¹⁴ Manual of Regulations for Non-Bank Financial Institutions —Regulations Governing Non-Bank Financial Institutions Performing Quasi-Banking Functions (MORNBFI—Q Regulations)	BSP

Sec. 3.1, RA 8791 (The General Banking Law of 2000)'Banks' shall refer to entities engaged in the lending of funds obtained in the form of deposits.

13 Id., at Sec. 4 'Quasi-banks' shall refer to entities engaged in the borrowing of funds through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Section 95 of Republic Act No. 7653 (hereafter the "New Central Bank Act") for purposes of relending or purchasing of receivables and other obligations.

14 Sec. 3, RA 9474 (Lending Company Regulation Act)

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Trust Entity ¹⁵	The General Banking Law of 2000 (RA 8791)	BSP
	Manual of Regulations for Non-Bank Financial Institutions — Regulations Governing Trust Corporations (MORNBFI—T Regulations)	

^{&#}x27;Quasi-Bank' shall refer to a non-bank financial institution authorized by the BSP to engage in quasi-banking functions and to borrow funds from more than nineteen (19) lenders through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Sec. 95 of RA No. 7653 (the *New Central Bank Act*) for purposes of relending or purchasing of receivables and other obligations.

¹⁵ Id., at Sec. 79.

Only a stock corporation or a person duly authorized by the Monetary Board to engage in trust business shall act as a trustee or administer any trust or hold property in trust or on deposit for the use, benefit, or behoof of others. For purposes of this Act, such a corporation shall be referred to as a trust entity.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Pawnshop ¹⁶	Pawnshop Regulation Act (PD 114)	BSP
	Manual of Regulations for Non-Bank Financial Institutions—Regulations Governing Pawnshops (MORNBFI—P Regulations)	
Non-Stock Savings and Loans Associations (NSSLAs) ¹⁷	Revised Non-Stock Savings and Loan Association Act of 1997 (RA 8367)	BSP

and for personal finance

¹⁶ Sec. 3, P.D. 114 (Pawnshop Regulation Act)

^{&#}x27;Pawnshop' shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably with pawnbroker or pawn brokerage.

¹⁷ Sec. 3, RA 8367 (Revised Non-Stock Savings and Loan Association Act of 1997)
'Non-stock savings and loan association' shall mean a non-stock, non-profit corporation engaged in the business of accumulating the savings of its members and using such accumulations for loans to members to service the needs of households by providing long term financing for home building and development

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
	Manual of Regulations for Non-Bank Financial Institutions—Regulations Governing Non-Stock Savings and Loan Associations (MORNBFI—S Regulations)	BSP
Remittance and Transfer Companies (RTCs) ¹⁸	Manual of Regulations for Non-Bank Financial Institutions—Regulations Governing Other Non-Bank Financial Institutions (MORNBFI—N Regulations), Section 4511N, as amended by BSP Circular No. 942 s. 2017	BSP

¹⁸ BSP Circular No. 942 s. 2017

^{&#}x27;Remittance and Transfer Company' (RTC) - refers to any entity that provides Money or Value Transfer Service (MVTS). MVTS refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Money Changer (MC)/Foreign Exchange Dealer (FXD) ¹⁹	Non-Bank Financial Institutions—Regulations Governing Other Non- Bank Financial Institutions (MORNBFI—N Regulations), Section 4511N, as amended by BSP Circular No. 942 s. 2017	BSP
	• • • • • • • • • • • • • • • • • • • •	
Investment House ²⁰	Investment House Law (PD 129)	SEC
Financing Company ²¹	Financing Company Act (RA 5980)	SEC

19 See Id.

Money Changer (MC)/Foreign Exchange Dealer (FXD) - refers to any entity who engages in money changing/foreign exchange dealing business. This includes authorized agent banks' subsidiary/ affiliate forex corporations (AAB-forex corps), among others.

20 Secs. 2 & 3, P.D. 129 (Investment House Law)

Section 2. Scope. Any enterprise which engages in the underwriting of securities of other corporations shall be considered an "Investment House" and shall be subject to the provisions of this Decree and of other pertinent laws.

Sec. 3 (a) 'Underwriting' is the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation.

21 Sec. 3, RA 5980 (Financing Company Act)

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Lending Company ²²	Lending Company Regulation Act (RA 9474)	SEC
Broker ²³	Securities Regulation Code (RA 8799)	SEC

- (a) 'Financing companies' hereinafter called companies, are corporations, except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under otherspecial laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property;
- 22 Sec. 3, RA 9474 (Lending Company Regulation Act)
 - (a) 'Lending Company' shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. It shall not be deemed to include banking institutions, investment houses, savings and loan associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law. The term shall be synonymous with lending investors.
- 23 Sec. 3.3, RA 8799 (Securities Regulation Code)
 - 3.3. 'Broker' is a person engaged in the business of buying and selling securities for the account of others.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Clearing Agency ²⁴	Securities Regulation Code (RA 8799)	SEC
Exchange ²⁵	Securities Regulation Code (RA 8799)	SEC
Underwriter ²⁶	Securities Regulation Code (RA 8799)	SEC
Issuer ²⁷	Securities Regulation Code (RA 8799)	SEC

- 24 Id., at Sec. 3.6.
 - 3.6. 'Clearing Agency' is any person who acts as intermediary in making deliveries upon payment effect settlement in securities transactions.
- 25 Id., at Sec. 3.7
 - 3.7. 'Exchange' is an organized market place or facility that brings together buyers and sellers and executes
 - trade of securities and/or commodities.
- 26 Id., at Sec. 3.8.
 - 3.8. 'Insider' means (a) the issuer; (b) a director or officer (or any person performing similar functions) of, or a person controlling the issuer; gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) A government employee, director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) a person who learns such information by a communication from any forgoing insiders.
- 27 Id., at Sec. 3.2.
 - 3.2. 'Issuer' is the originator, maker, obligor, or creator of the security.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Investment Company ²⁸	Investment Company Act (RA 2629)	SEC
Investment Banker ²⁹	Investment Company Act (RA 2629)	SEC
Real Estate Investment Trust (REIT) ³⁰	REIT Act (RA 9856)	SEC

28 Sec. 3(n), RA 2629 (Investment Company Act)

- (n) 'Insurance company' means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the Insurance Commissioner; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.
- 29 Id., at Sec. 3 (p).
 - (p) 'Investment banker' means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions, but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.
- 30 Sec. 3, RA 9856 (REIT Act)
 - (cc) 'Real Estate Investment Trust' (REIT) is a stock corporation established in accordance with the Corporation Code of the Philippines and the rules and regulations promulgated by the Commission principally for the purpose of owning income-generating real estate assets. For purposes of clarity, a REIT, although designated as a trust, does not have the same technical meaning as trust' under existing laws and regulations but is used herein for the sole purpose of adopting the internationally accepted description of the company in accordance with global best practices.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Insurance Company ³¹	Insurance Code (RA 10607)	IC
Insurance Agents ³²	Insurance Code (RA 10607)	IC
Insurance Broker ³³	Insurance Code (RA 10607)	IC

- 31 Sec. 170, PD 612, as amended by RA 10607 (Insurance Code)
 Section 170. For the purposes of this chapter unless the context otherwise requires the terms 'company' or 'insurance company' shall include all corporations, associations, partnerships, or individuals engaged as principals in the insurance business, excepting fraternal and benevolent orders and societies.
- 32 Id., at Sec. 309.

Section 309. Any person who for compensation solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiating of such insurance shall be an insurance agent within the intent of this section and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance agent is subject.

An insurance agent is an independent contractor and not an employee of the company represented. 'Insurance

agent' includes an agency leader, agency manager, or their equivalent.

33 Id., at Sec. 310.

Section 310. Any person who for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself, shall be an insurance broker within the intent of this Code, and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance broker is subject.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Professional Reinsurer ³⁴	Insurance Code (RA 10607)	IC
Reinsurance Brokers ³⁵	Insurance Code (RA 10607)	IC
Holding Company ³⁶	Insurance Code (RA 10607)	IC
Holding Company System ³⁷	Insurance Code (RA 10607)	IC

34 Id., at Sec. 288

[...] 'professional reinsurer' shall mean any entity that transacts solely and exclusively reinsurance business in the Philippines [...] A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

35 Id., at Sec. 319

- [...] A 'reinsurance broker' is one who, for compensation, not being a duly authorized agent, employee or officer of an insurer in which any reinsurance is effected, acts or aids in any manner in negotiating contracts of reinsurance, or placing risks of effecting reinsurance, for any insurance company authorized to do business in the Philippines.
- 36 Id., at Sec. 290(c)(c) 'Holding company' means any person who directly or indirectly controls any authorized insurer.
- 37 Id., at Sec. 290 (f) (f) 'Holding company system' means a holding company together with its controlled insurers and controlled persons.

BUSINESS CATEGORY	REGULATORY STATUTE	REGULATOR
Mutual Benefit Associations ³⁸	Insurance Code (RA 10607)	IC
Pre-Need Companies ³⁹	Pre-Need Code (RA 9829)	IC

38 Id., at Sec. 403

Section 403. Any society, association or corporation, without capital stock, formed or organized not for profit but

mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while

out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of

whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the

members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life

insurance benefits out of such fixed and regular dues or assessments, but in no case shall include any society, association, or corporation with such mutual benefit features and which shall be carried out purely from voluntary contributions collected not regularly and/or no fixed amount from whomsoever may contribute, shall be known as a 'mutual benefit association' within the intent of this Code.

39 Sec. 4, RA 9829 (Pre-Need Code of the Philippines)

(c) 'Pre-need company' refers to any corporation registered with the Commission and authorized/ licensed to sell or offer to sell pre-need plans. The term 'pre-need company' also refers to schools, memorial chapels, banks, nonbank financial institutions and other entities which have also been authorized/licensed to sell or offer to sell pre-need plans insofar as their pre-need activities or business are concerned.

FinTech companies are likely to fall under more than one business category. But as they overlap categories, so do the rules they are subject to. The handling of intersectional laws in FinTech will be discussed later in more detail.

B. COMPLIANCE LAWS

These laws come into play as a result not only of FinTech participation in the financial industry, but also in the use of technology to deliver information and services. FinTechs must also comply with these laws to operate legitimately.

ANTI-MONEY LAUNDERING ACT (AMLA) OF 2001

The State has imposed statutes on financial institutions to prevent illegal activities. An example would be AMLA, which made it a state policy to "protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity.⁴⁰"

The law applies to "covered persons" as defined by Section X802 of MORB as amended by Section 1 of BSP Circular No. 950, issued by

the BSP to effectively implement the provisions of the AMLA. Under said circular, the "covered persons" are

- banks,
- non-banks,
- quasi-banks,
- trust entities,
- non-stock savings and loan associations,
- pawnshops,
- foreign exchange dealers,
- money changers,
- remittance and transfer companies,
- electronic money-issuers and
- other financial institutions which under special laws are subject to BSP supervision and/or regulation, including their subsidiaries and affiliates, wherever they may be located. One is considered a subsidiary if more than fifty percent (50%) of its voting stock is owned by a covered person while it is considered to be an affiliate if it only holds twenty to fifty percent (20% 50%) of voting stock.

The AMLA was further amended in 2016⁴¹, expanding its scope of "covered persons" to casinos with respect to cash transactions related

to their gaming operations.

FinTech companies may be considered covered persons because their business activities are analogous to those considered as such. Direct imposition of the same duties on FinTech companies may, however, prove difficult in implementation. After all, technology has transformed how these companies deliver financial products and services.

Duties have been imposed on traditional financial institutions via the AMLA. For starters, they are required to adopt prevention programs that help identify money laundering risks in their transaction patterns. Subsection X805.2 of MORB stipulates four key areas:

- (1) adequate and active board and senior management oversight,
- (2) acceptable policies and procedures embodied in a money laundering and terrorist financing prevention compliance program,
- (3) appropriate monitoring and Management Information System, and (4) comprehensive internal controls and audit⁴².

Prevention programs must be in writing. It also has to be approved by the Board of Directors, disseminated to all officers and staff involved with the program, and updated once every two years to incorporate changes in AML policies and procedures and in trends in money laundering and terrorist financing (ML/TF) typologies.⁴³

⁴² BSP Manual of Regulations for Banks, Section X805

⁴³ Id., at Subsection X805.2 (as amended by Section 3 of BSP Circular No. 950)

Aside from the internal AML procedures of covered persons, the AMLC conducts a National Risk Assessment (NRA) together with other stakeholders. This helps determine, identify, and assess the ML/TF risks in different sectors for which they can craft solutions to. The NRA uses the National ML/TF Risk Assessment Tool developed by the World Bank.

Last December 20, 2017, AMLC approved the second NRA Report, covering the years 2015-2016. It identified the prevalent threats, which include "proceeds-generating predicate offenses, such as drug trafficking, smuggling, violations of the Intellectual Property Law, environmental crimes, estafa, and plunder.⁴⁴"

In the banking sector, four products were identified to be most susceptible to ML/TF. These are (1) private banking services, (2) deposits, (3) remittance, and (4) trust products. All these scored a "medium". However, as discussed earlier, these risks are routinely mitigated by AML controls⁴⁵.

More on the duties imposed by Subsection X805.5 of the MORB:

1) Covered persons must classify its customers and potential clients based on their likelihood of engaging in money laundering and other illicit activities. This classification determines the level of customer

⁴⁴ Anti-Money Laundering Council. *The Philippines Second National Risk Assessment on Money Laundering and Terrorist Financing*, 2017, http://www.amlc.gov.ph/images/PDFs/NRAReport20152016.pdf.

⁴⁵ Id

- due diligence (CDD) i.e. reduced, average, or enhanced, which the covered persons must discharge when accepting transactions⁴⁶.
- 2) Covered persons are required to report covered transactions. These are transactions that exceed PHP500,000 in cash or in equivalent monetary instrument to the BSP. Furthermore, they are required to report suspicious transactions even if it does not reach the threshold amount as long as one of the circumstances are present:
- There is no underlying legal or trade obligation, purpose or economic justification;
- **b** The client is not properly identified;
- The amount involved is not commensurate with the business or financial capacity of the client;
- d Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the AMLA, as amended;
- e Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered person;

- The transaction is in any way related to an unlawful activity or any money laundering activity or offense, that is about to be committed, is being or has been committed; or
- Any transaction that is similar, analogous or identical to any of the foregoing; or
- h Any unsuccessful attempt to transact with a covered person, the denial of which is based on any of the foregoing circumstances⁴⁷.
- 3) Institutions are required to establish and verify the true identity of their customers by checking for official documents and by face-to-face contact. The latter may be conducted through Information and Communication Technology (ICT)⁴⁸.
- 4) As per BSP Circular No. 952, BSP has recently required that the fees charged for domestic remittance transactions be disclosed to its customers.

Failure to comply with these regulations results in sanctions and penalties. Depending on offense severity, these sanctions can be a written reprimand, restriction on certain licenses/product, suspension, removal from their current office or disqualification from holding any position in any covered institution.

⁴⁷ Id., at Section X803 (as amended by Section 2(d) of BSP Circular No. 950)

⁴⁸ Id., at Subsection 806.2 (as amended by Section 6 of BSP Circular No. 950)

FinTech companies attract customers because of the degree of privacy, efficiency, and convenience they provide. Therefore, requiring FinTech companies to establish customer identity may compromise their competitive edge against traditional financial institutions. This defeats the very purpose of simplifying service delivery and streamlining bureaucracy⁴⁹.

However, there are several jurisdictions in Australia, Canada, Denmark, Hong Kong, Malaysia, Singapore, United Arab Emirates, and the United Kingdom⁵⁰ that have implemented regulatory sandboxes as a middle ground between innovators and regulators. It not only allows the innovators to test its new technologies and business models in a controlled environment, but also allows regulators to identify and address potential risks of the new technologies without stifling innovation⁵¹.

The BSP has adopted proportionate KYC ("knowing your customers") policy. This balances interests when granting services to the financially disadvantaged, and prevents suspicious persons from opening or maintaining an account, or transacting with the covered person⁵². Every covered person must have a clear, written, and graduated customer acceptance and identification policies and procedures⁵³. Customers are then subject to a risk-based and tiered acceptance, identification, and retention policy—dependent on the required CDD.

⁴⁹ Dong He, et al, Fintech and Financial Services: Initial Considerations, (2017)

⁵⁰ Khushboo Agarwal. *Playing in the Regulatory Sandbox*. NYU Journal of Law & Business. January 8, 2018, https://www.nyujlb.org/single-post/2018/01/08/Playing-in-the-Regulatory-Sandbox.

⁵¹ Dong He, et al, Fintech and Financial Services: Initial Considerations, (2017)

⁵² BSP Manual of Regulations for Banks, Section X804

⁵³ Id., at Subsection X06.1 (as amended by Section 4 of BSP Circular No. 950)

For average CDD, covered persons are required to obtain personal information about the individual or juridical entity and verify their identities based on official documents or other reliable, independent source documents, data, or information⁵⁴.

If one is classified as a high-risk client, an enhanced CDD is required, which requires the covered person to accomplish the following:

- collecting additional customer information and/or identification documents on the individual or juridical entity;
- **2** conducting validation procedures;
- securing senior management approval to commence or continue a business relationship or transactions with the customer;
- conducting enhanced ongoing monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that require further examination;

- requiring the first payment to be carried out through another bank under the client's name which is subject to similar CDD standards, if applicable; and
- other measures which the covered person may deem reasonable or necessary⁵⁵.

Gathering of the minimum information and/or documents may be outsourced to counterparties without prior BSP Monetary Board approval, subject to a written service level agreement and the availability of a reliable and acceptable customer identification system and training program. However, the covered person still has the ultimate responsibility for knowing the customer and for keeping the identification documents.

As part of CDD, covered persons are required to update all customer identification information and documents once every three years except if an enhanced ongoing monitoring is required⁵⁶. Covered persons establish a system that allows them to understand customer behavior. This ensures that the customers' accounts and transactions are consistent with customer activity⁵⁷ [6]. On the one hand, this process is time-consuming and costly. It requires covered persons to use substantial resources to double-check the information given to them.

⁵⁵ Id., at Subsection X806.1(b) (as amended by Section 4 of the BSP No. 950)

⁵⁶ Id., at Subsection 806.3 as amended by Section 7 of the BSP

⁵⁷ Ibid.

On the other hand, requiring a client's first payment to be carried out through another bank under the same name and with similar CDD standards may boost the confidence of the covered person on the former and require fewer background checks.

To provide access of financial services to micro-business owners and low-income households pursuant to regulatory policy, BSP allows them to open restricted accounts if the latter cannot provide any of the required personal information for valid reasons or any valid identification document, but subject to the following conditions:

- 1. the aggregate credits in a year shall not exceed PHP100,000;
- 2. the account shall not be allowed to receive/send remittances;
- 3. In lieu of a valid ID, the customer shall provide their
 - Name;
 - Birth date;
 - Source of fund/s;
 - Present and/or permanent address;
 - Nationality; and
 - Clear photograph and signature or thumbprint.
- 4. the customer must obtain a valid ID within 12 months, extendible to another 12 months, provided that it shows a proof of application for a valid ID.

Despite the reduced KYC standard for the financially disadvantaged, there is a disjunct between the theory and the practice. In practice, when transactions involve PHP100,000 or less, people transact in cash only and do not see the need of coursing it through the banks.

Furthermore, if the transaction is cash-only, there is no need for a reduced KYC standard in the first place. Lastly, on the point of view of FinTech companies, it may restrict their services to PHP100,000 or less and/or to domestic remittances only, which may defeat their purpose of providing financial services to the unbanked.

DATA PRIVACY ACT (DPA) OF 2012

In the course of providing financial services, FinTech companies utilize the data of their customers. They collect their client's names, addresses, date of birth, gender, nationality, password, personal identification numbers (PINs), bank account details, social security details, etc.⁵⁸ Recently, FinTech companies have begun to use alternative data to provide additional insights for decision-making.⁵⁹ Alternative data pertains to data drawn from non-traditional, as opposed to traditional, sources.⁶⁰ These include web search history⁶¹,

PayMaya, *Privacy Policy*, https://paymaya.com/privacy/

⁵⁹ Scott Ikeda, "Can Fintech Ensure the Security and Privacy of Customer Data", CPO Magazine, https://www.cpomagazine.com/2017/10/24/can-fintech-ensure-security-privacy-customer-data/2/

^{60 &}quot;Alternative Data: How You Can Leverage It," Import.io, https://www.import.io/post/alternative-data-leverage/

^{61 &}quot;Can Web Search History Become the Holy Grail of Credit Scoring?", Go Medici, https://gomedici.com/

social network behavior (e.g. the kind of interaction they have, how they respond to certain issues online and what they post), and psychological profiles.⁶²

Because FinTech companies collect personal and sensitive information, the DPA proves useful. This law applies to anyone who controls or uses personal information.⁶³ As such, financial institutions and their FinTech counterpart may be considered personal information controllers under the law.

The law protects two classes of information. The first class is 'personal information' (PI) which "refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual"⁶⁴. It is worth noting that the law has defined PI very broadly in that it includes not only information that would point to an identity, but also derivative information that may be used in conjunction with other such information to arrive at the same. The second class is 'sensitive personal information' (SPI) which is a narrower, more protected category of PI. This includes information that may easily lend to discrimination, e.g., race, ethnic origin, marital status, age, health, etc.⁶⁵

can-web-search-history-become-a-holy-grail-of-credit-scoring/

⁶² Id

⁶³ Sec. 4, RA 10173 (Data Privacy Act)

⁶⁴ Id., at Sec. 3(g)

⁶⁵ Id., at Sec. 3 (I).

Since the DPA only protects information that could identify an individual, it does not apply to anonymized data. Anonymized data refers to information which does not relate to an identifiable person or personal data rendered anonymous in such a manner that the data subject is no longer identifiable. The distinction between personal information and anonymized information is important. Data which has been anonymized ceases to be personal data, and so it can be retained and used without having to comply with the DPA.

The law requires FinTech companies, as controllers or processors of personal information, to uphold the data privacy rights of their clients and to adhere to the general principles of data privacy.⁶⁶ There are four key areas in which FinTech companies are particularly affected by the DPA.

CONSENT

The DPA allows the processing of PI and SPI only under certain conditions⁶⁷. One such condition for PI is that "[t]he data subject has given his or her consent"⁶⁸. In the case of SPI, the consent required for processing of the same is much stricter, in that it contemplates that the "data subject has given his or her consent, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing"⁶⁹.

⁶⁶ Disini & Disini Law Office, Data Privacy Principles and Rights, https://privacy.com.ph/dndfeature/data-privacy-principles-rights/ (last visited on June 17, 2018).

⁶⁷ Secs. 12 & 13, RA 10173, (Data Privacy Act)

⁶⁸ Id., at Sec. 12 (a)

⁶⁹ Id., at Sec. 13 (a)

In the case of FinTech, processing will likely not be limited to PI, but also include SPI. Financial transactions, by nature, require a considerable degree of personal information. This brings risk to the table. Ownership and attribution of financial assets and liabilities also become concerns.

Other than consent, there are other conditions that may justify processing. The DPA, for example, allows processing (even without explicit consent) in order to fulfill a contract. The law also allows processing to comply with a legal obligation, or necessary for the purposes of a legitimate interest of the personal information controller.

FinTech companies may be able to rely on these exceptions to the consent requirement, since their use of data will often be in the context of a contract for financial services. However, resorting to and relying on these exceptions is ultimately determined by the factual circumstances at hand, which may or may not be within the control of the processing body. In contrast, from a practical standpoint, consent and evidence thereof is arguably more within the knowledge or control of such person.

Under the law, consent must be freely given, specific, and informed⁷⁰. Consent shall also be "evidenced by written, electronic or recorded means"⁷¹. FinTech companies may not assume that their customers consented to the processing of their personal information. The National Privacy Commission (NPC), in an advisory opinion, has

⁷⁰ Id., at Sec 3 (b)

⁷¹ Ibid.

clarified that implied consent is not valid. Hence, silence, pre-ticked, or inactivity does not constitute valid consent. Moreover, companies must ensure that their clients are aware and agree to all the purposes of processing. ⁷² Clients are also given the right to withdraw consent without overriding legal grounds. ⁷³

NOTIFICATION AND REGISTRATION OF AUTOMATED DECISION-MAKING PROCESSES

Some FinTech companies have automated decision-making processes. Under the DPA, "automated decision-making" refers to "a wholly or partially automated processing operation that serves as the sole basis for making decisions that would significantly affect a data subject. It includes the process of profiling based on an individual's economic situation, political or religious beliefs, behavioral or marketing activities, electronic communication data, location data, and financial data, among others."⁷⁴

For example, an insurer may relegate the decision to grant or deny an insurance policy application to a computer program that applies algorithms to determine policy risk, given the applicant's responses. Where such a program makes such decisions with no other manual intervention, there is automated decision-making.

⁷² National Privacy Commission (NPC) Advisory No. 2017-42.

⁷³ Sec. 16 (e), RA 10173, (Data Privacy Act)

⁷⁴ NPC Advisory No. 2017-21.

In addition, FinTech companies are required, in certain instances, to register their processing systems.⁷⁵ While the DPA does not provide a penalty for the lack of notification and registration, the NPC may take into account such factors in the determination of the company's liability in case of a data breach.⁷⁶

For every decision made in automation, the NPC must be notified.

DPO APPOINTMENT

FinTech companies using personal data are required to appoint a data protection officer (DPO). The DPO's main responsibility is to ensure and monitor compliance with the DPA, its IRR, and the issuances by the NPC.⁷⁷

DATA BREACH NOTIFICATION

FinTech companies that control SPI (e.g. race, ethnicity, marital status, age, religious, or political affiliations) are required to notify the NPC within 72 hours upon knowledge of or when there is reasonable belief that a breach has occurred.⁷⁸ Most especially when the breach is likely to seriously harm the client.⁷⁹

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Sec. 26, Implementing Rules and Regulations to RA 10173, (Data Privacy Act)

⁷⁸ Sec. 38, Data Privacy Act.

⁷⁹ Ibid.

FinTech companies who comply with the DPA are more likely to build strong and trusting relationships with their customers. ⁸⁰ After all, consumers are becoming more protective of their privacy. Besides the consumer benefit, sanctions will be imposed upon failure to comply. ⁸¹ FinTech companies have nothing to lose and everything to gain from total compliance.

PHILIPPINE COMPETITION ACT

Actors in the FinTech space can range from well-entrenched incumbents, such as banks building digital interfaces to their services, to startup companies offering new services. FinTech offerings also rely on data connectivity infrastructure, whether owned or simply operated by the country's telecommunications duopoly.

The Competition Act seeks to maintain a healthy level of competition in the Philippine marketplace for a more equitable distribution of opportunities, income, and wealth.⁸² Pursuant to the interest of the State to maintain competition in the market, the Competition Act and its implementing rules provide for Prohibited Acts⁸³ including:

National Privacy Commission, *Data Privacy Compliance a Competitive Edge for PH Companies*, online at https://privacy.gov.ph/data-privacy-compliance-competitive-edge-ph-companies/ (visited June 24, 2018).

⁸¹ Secs. 25-33, RA 10173, (Data Privacy Act)

⁸² Sec. 2, RA 10667 (Philippine Competition Act)

⁸³ Rule 3, Implementing Rules and Regulations, RA 10667 (Philippine Competition Act)

Anti-Competitive Agreements, and Abuse of Dominant Position. The Act also allows the Philippine Competition Commission (PCC) to review mergers and acquisitions made by companies that would be disadvantageous to smaller local businesses.⁸⁴

PROHIBITED ACTS

The Competition Act prohibits Anti-Competitive Agreements and Abuse of Dominant Position. Anti-Competitive Agreements are those that restrict competition through price, other terms of trade, price fixing or bid manipulation. ⁸⁵ Agreements which have the object of substantially preventing, restricting, or lessening competition are also considered to be Anti-Competitive.

This can include agreements which set, limit, or control production, markets, technical development, or investment, or divide or share the market agreements which have the object of substantially preventing, restricting, or lessening competition. While Abuse of Dominant Position includes conduct that substantially prevents, restricts, or lessens competition. Section 2, Rule 4 of the Competition Act provides for a list of abusive conduct. For

⁸⁴ Id., at Rule 4

⁸⁵ Id.,Rule 3

⁸⁶ Id., at Sec. 1(a)

⁸⁷ Id., at Sec. 2, Rule 4

MERGERS AND ACQUISITIONS

Under the Competition Act, the PCC is given the power to review mergers and acquisitions.⁸⁸ In conducting such review, the PCC shall

- 1) assess whether the proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the market;
- 2) take into account and efficiencies put forward by the parties, which are likely to arise from the transaction.⁸⁹ The PCC must also compare the conditions that would likely result from the transaction with conditions that would likely have prevailed if the transaction did not occur.⁹⁰ The evaluation may be done in a case-to-case basis and take into account several factors which are provided for by the implementing rules of the Competition Act.⁹¹

When mergers and acquisitions reach the Commission-determined threshold, companies are required to notify the PCC.⁹² Such mergers and acquisitions may not be consummated without complying with the notification requirement.⁹³ Parties may also inform the PCC of a proposed merger or acquisition in a pre-notification consultation to seek non-binding advice on the specific information required

⁸⁸ Sec. 16, RA 10667 (Philippine Competition Act)

Sec. 1(a), Rule 4, Implementing Rules and Regulations, RA 10667 (Philippine Competition Act)

⁹⁰ Id., at Sec. 1 (b)

⁹¹ Id., at Sec. 1 (c)

⁹² Id., at Sec. 2 (a)

⁹³ Id., at Sec. 2 (b)

in the notification.⁹⁴ Mergers and acquisitions that substantially prevent, restrict, or lessen competition in the relevant local market, as determined by the PCC, shall be prohibited.⁹⁵

The FinTech landscape may feature dominant players who are in a position to limit competition and distort the market. The Competition Act provides certain rules to help ensure that FinTech customers maximize available services and that the playing field is equalized for local companies.

A company with more resources, larger market share, or control of critical infrastructure may be inclined to use strategies which the Competition Act will prohibit, like price fixing or completely acquiring local players in order to eliminate their competition. The Competition Act allows the smaller players in the market to prevent dominant players from abusing their position so that healthy competition in the marketplace remains.

⁹⁴ Id., at Sec. 4

⁹⁵ Id., at Sec. 9.

THE UBER-GRAB DEAL

In 2018, two international players in the Philippines entered into a merger which was reviewed by the PCC. Both Grab and Uber are ride hailing services operating in the Philippines. Grab purchased Uber's Southeast Asia operations.

This led to the PCC to review the acquisition since it came into the threshold of the notification requirement and the same resulted in a virtual monopoly for Grab.⁹⁶ The PCC stated its concern due to the acquisition and had issued orders and interim measure with regard to the acquisition.⁹⁷ While the deal was eventually approved by the PCC, two important points emerged from the review:

- Competition authority can still scrutinize transactions based on a sectoral view of the relevant market. Uber and Grab are not dominant in transport industry but they were the only significant ridesharing applications;
- 2. Even if the transaction is already approved by the sectoral regulator, i.e, the Land Transportation and Regulatory Board (LTFRB) in the Uber/Grab deal, it can still be reviewed by the PCC.

⁹⁶ Philippine Competition Commission, Press Statement, "Grab-Uber Acquisition", April 2, 2018, http://phcc.gov.ph/press-statement-grab-uber-acquisition/

⁹⁷ Philippine Competition Commission (PHCC) Commission Order No. M-2018-001

SEC RULES ON MASS MEDIA

According to the SEC, mass media refers to any medium of communication designed to reach the masses, the distinctive feature of which is the dissemination of information and ideas to the public. It may also refer to the means or methods used to convey advertising messages. Examples include television, radio, magazines, billboards.⁹⁸

However, platforms for mass media are not limited physical structures and printed materials. It covers platforms such as the Internet. ⁹⁹ Hence, according to the SEC, corporations that provide an online platform that brings parties together for increasing sales are considered as mass media. ¹⁰⁰ In such a scenario, the corporation, in effect, disseminates information to the general public through the Internet and is thereby considered as a mass media entity. ¹⁰¹ Under this standard, a FinTech company that provides easily-accessible information through its own platform is considered a mass media entity.

The classification has significant implications. If classified as mass media, the Constitution requires that the company be wholly-owned by Filipinos.¹⁰²

⁹⁸ Securities and Exchange Commission (SEC) Opinion No. 14-06.

⁹⁹ SEC Opinion No. 16-21.

¹⁰⁰ SEC Opinion No. 17-07

¹⁰¹ Id

¹⁰² Sec. 11, Article XVI, 1987 Constitution.

Because of this, classifying FinTech companies as mass media entities can subject them to requirements that will limit their ability to receive foreign capital. This limitation on foreign ownership hinders the importation of potential capital, technology, production skills, and management systems.¹⁰³ In addition, these rules also inhibit healthy competition within the industry which is a driver of innovation.¹⁰⁴ Finally, the country loses potential tax revenues from the profits generated by foreign FinTech corporations.¹⁰⁵

The SEC in November 2018 released by the General Counsel of the SEC in SEC-OGC Opinion No. 18-21 ¹⁰⁶, which cautioned online/ mobile app platform operators to observe the following guidelines:

- Avoid creating commercial materials for the products of their third-party clients that will end up on their respective platforms.
- Refrain from advising third-party clients on advertising materials and commercial messages.
- Limit the display of materials that promote products and services belonging to third-party clients.

¹⁰³ Allan Beattie, "Foreign Direct Investment: It's Not All Good", Financial Times, https://www.ft.com/content/6f71229d-d74d-34fa-a30d-39e4ac07de8b

¹⁰⁴ Department of Foreign Affairs and Trade, "The Benefits of Foreign Investment", http://dfat.gov.au/trade/investment/Pages/the-benefits-of-foreign-investment.aspx

¹⁰⁵ Prakash Loungani & Assaf Razin, "How Beneficial is Foreign Direct Investment for Developing Countries?", International Monetary Fund, June 2001, http://www.imf.org/external/pubs/ft/fandd/2001/06/loungani.htm

¹⁰⁶ SEC-OGC Opinion No. 18-21, Re: Mass Media, Digital Platform. http://www.sec.gov.ph/wp-content/ uploads/2018/12/2018OpinionNo18-21.pdf

- Ensure that only the following information may be made available in the app, website or platform:
 - Enumeration of the services offered by the platform itself;
 - Instruction on how to use the said platform;
 - Enumeration of third-party partner, and this shall only be limited to the listing of the name or logo of the third-party client.
 - Any other information on the platform required to be disclosed by any law or regulatory measures.
 - Ensure that the disclosure of the products and services offered by its third-party clients is only for the purpose of completing the transaction enabled by the app, website, or platform.

Crucially, the Chairman of the SEC subsequently clarified in a December 2018 letter to FINTQ, a FinTech company that the business model of its digital lending platform known as Lendr would not be deemed as engaged in either advertising or mass media activities. In reaching this conclusion, it was noted that Lendr "does not conceptualize, create, conduct, produce, implement or give counsel on any promotional campaigns or programs for and in behalf of a BSP-supervised financial institution (BSFI), and does not select or recommend to the BSFI the medium or media to be used as the vehicle for disseminating messages to the public."¹⁰⁷

It also reflected the regulator's progressive mindset towards supporting innovation for the common good as it clearly stated in the said subsequent opinion, to wit: "Cognizant, however, of the anticipated contribution of the Lendr platform to interest rate discovery and transparency in the financing/lending space, we make an exception." ¹⁰⁷

CYBERSECURITY/CYBERCRIME

One of the biggest cyber heists to date involved the illegal transfer of US\$81 million from Bangladesh's central bank account to the US Federal Reserve. For a short time, the loot was deposited in a Philippine bank account via Rizal Commercial Banking Corp. (RCBC).¹⁰⁸ Cybercrime incidents involving banks and other financial institutions remain a persistent concern worldwide.

¹⁰⁸ SecurityWeek, "Philippine Bank Threatens Counter-Suit Over World's Biggest Cyber-Heist". February 8, 2018. https://www.securityweek.com/philippine-bank-threatens-counter-suit-over-worlds-biggest-cyber-heist.

	DATE	DESCRIPTION
JAPAN	January 2018	Coincheck, one of Japan's leading bitcoin and cryptocurrency exchange in Asia reported a heist of US\$530 million in NEM , a lesser known digital currency. The company has already promised to partially refund its customers. ¹⁰⁹
KOREA	December 2017	Youbit, a digital currency company based in Seoul, Korea, filed for bankruptcy after being hacked twice on April and on December. Hackers made off with US\$35 million in digital currencies in the first heist while an estimate of one-fifth of its clients' holdings (amount was undisclosed by the company) in the second heist. The company has promised to return three-fourths of the value of the digital currencies owned by its clients ¹¹⁰ .

Daniel Shane, "\$530 million cryptocurrency heist may be biggest ever", CNN Tech, January 29, 2018, http://money.cnn.com/2018/01/29/technology/coincheck-cryptocurrency-exchange-hack-japan/index. html.

¹¹⁰ Daniel Shane, "Bitcoin exchange goes bust after hack", CNN Tech, December 20, 2017, http://money.cnn. com/2017/12/20/technology/south-korea-bitcoin-exchange-closes/index.html?ild.=EL

	DATE	DESCRIPTION
SLOVENIA	December 2017	NiceHash, a Slovenian based company, which describes itself as the largest marketplace to mine digital currencies, suspended its operations for 24 hours after US\$75 million worth of bitcoins were stolen. The heist was done by using an employee's credentials ¹¹¹ .
KOREA	April 2017	Bithumb, a South Korean crypto exchange, was fined US\$55,000 by the local regulator, South Korea's Communications Commission (KCC) after personal data of its customers were released twice. After the investigation of KCC, it was found that the company failed to introduce safeguards against security breaches ¹¹² .

¹¹¹ Rishi Iyengar, "More than \$70 million stolen in bitcoin hack", CNN Tech, December 8, 2017. Accessed June 26, 2018. http://money.cnn.com/2017/12/07/technology/nicehash-bitcoin-theft-hacking/index. html?ild.=EL

¹¹² Kevin Helms. "SK Regulator Fines Exhange Operate Bithumb 60 Million Won for Leaking Customer Data.

DATE	DESCRIPTION
June 2016	US\$50 million in virtual currency and was stolen from Decentralized Autonomous Organization, a business run electronically by Ethereum, a platform that writes computer code called smart contracts. One of the auditors of Ethereum's code theorizes that the heist was successful because the thief might have exploited a programming mistake 113.

Threatmatrix, a security technology company, published a FinTech cybercrime report last 2017. Data shows that the most common cybercrime is identity spoofing, averaging 7.25% attacks as of 2016¹¹⁴. Identity spoofing is the act of intercepting a message from a legitimate sender and recrafting it before rerouting it to potential targets.

Bitcoin.com. December 12, 2017, https://news.bitcoin.com/south-korean-regulator-fines-bithumb-leaking-customer-data/

¹¹³ Klint Finley. A \$50 million hack just showed that the DAO was all too human. Wired.com. June 18, 2016, https://www.wired.com/2016/06/50-million-hack-just-showed-dao-human/.

¹¹⁴ Jennifer Klostermann, "ThreatMetrix Quarterly Fintech Cybercrime Report 2017", Cloud Tweaks.com. February 8, 2017, https://cloudtweaks.com/2017/02/Fintech-cybercrime-report-2017/.

Believing it to be from trusted sources, users are deceived into giving their login credentials. With cybercrimes on the rise, regulations have been created to safeguard companies and its customers.

The BSP has the duty to "determine the IT profile of all BSFIs and classify them as "Complex," "Moderate," or "Simple," pursuant to the recently revised standards on risk management by the Basel Committee¹¹⁵, which the Philippines is voluntarily compliant¹¹⁶. The IT profile will show the inherent risk of a BSFI¹¹⁷ to a cyberattack by looking into the IT infrastructure and operation, digital/electronic financial products and services, IT projects and initiatives, outsourced services, systemic importance, and threats. Based on the BSFIs' IT profile, the BSP will conduct on-site evaluations of the BSFIs' IT risk management system by checking if the system has any weaknesses.¹¹⁸

Pursuant to BSP's evaluation, BSFIs are required to adopt a robust IT risk management system (ITRM), which cover four areas:

¹¹⁵ BSP Circular No. 781 (2013).

¹¹⁶ Melissa Lopez, "Philippines seen to keep Basel 3 timelines in step with peers", BusinessWorld Online.
May 9, 2017., http://www.bworldonline.com/content.php?section=TopStory&title=philippines-seen-to-keep-basel-3-timelines-in-step-with-peers&ld.=144913.

¹¹⁷ BSP Manual of Regulations for Banks, Subsection X177.3 as amended by Section 2 of BSP Circular No. 982 (2017)

¹¹⁸ BSP Manual of Regulations for Banks, Subsection X177.4



Failure to comply with these regulations results in sanctions and penalties provided by RA 7653 or the New Central Bank Act. Said Act imposes criminal liability and administrative liability.

¹¹⁹ BSP Manual of Regulations for Banks, Section 177.7

¹²⁰ Sec. 4(a), RA 10175 (Cybercrime Prevention Act)

Aside from the BSP regulations, RA 10175 or the Cybercrime Prevention Act of 2012 (CPA) penalizes offenses that are against confidentiality, integrity, and availability of computer data and systems. This includes illegal access, illegal interception, data interference, system interference, misuse of devices, cybersquatting, and other computer-related offenses such as forgery, fraud, and identity theft. An aggrieved customer may file a criminal complaint under the CPA to try and recover stolen data.

With the advent of RA 8792 or the Electronic Commerce Act of 2000, electronic data messages¹²² and electronic documents¹²³are considered to be valid and enforceable. This is relevant because most of the documents of FinTech services are digital, and through this statute, one who relies on such documents may be used as a basis to enforce their rights.

Recently, the Supreme Court issued the Rule on Cybercrime Warrants (RCW) pursuant to its power to promulgate rules concerning the pleading, practice and procedure under Section 5(5), Article VIII of the 1987 Constitution. It provides the rules of procedure for applying and granting of the different warrants and orders allowed under RA 10175¹²⁴ such as venue.

¹²¹ Sec. 4(b), RA 10175, (Cybercrime Prevention Act)

¹²² Sec. 6, RA 8792 (Electronic Commerce Act)

¹²³ Sec. 7, RA 8792 (Electronic Commerce Act)

¹²⁴ Sec. 1.2, Rule on Cybercrime Warrants, A.M. No. 17-11-03-SC, July 3, 2018.

If the crime is a violation of Section 4 of RA 10175, the criminal action must be filed with the cybercrime court of the province or city where the offense of any of its elements is committed, or where any part of the computer system used is located, or where any of the damage is effected against any natural or juridical person¹²⁵. However, if it is a violation of the Revised Penal Code or special laws where it was committed by, through, and with the use of ICT, it must be filed regular or specialized regional trial courts¹²⁶.

The same venue is applicable in applying for warrants provided by RA 10175 and its IRR. However, law enforcement authorities (LEA) may apply for a warrant, in addition to the venues provided above, where the elements of crime has been committed, is being committed, or is about to be committed.

For preservation orders¹²⁸, the Supreme Court merely reiterated RA 10175. Depending on the type of data, service providers are obligated to preserve the integrity of such data. For traffic data and subscriber's information, they are to preserve it for a minimum period of six months from the date of the transaction. For content data, it must be preserved for six months from the date of receipt of the order from LEA requiring its preservation¹²⁹. Said period is extendible once for another six months.

¹²⁵ Id., at Sec. 2.1.

¹²⁶ Ibid.

¹²⁷ Id., at Sec. 2.2.

¹²⁸ Sec. 13, RA 10175, (Cybercrime Prevention Act)

¹²⁹ Sec. 2.1., Rule on Cybercrime Warrants

For disclosure orders¹³⁰, real-time collection of content data¹³¹, and search and seizure warrants¹³², the RCW provides for specific warrants, depending on the purpose of the LEA. On one hand, a Warrant to Disclose Computer Data (WDCD) is issued to authorize LEA to issue an order to disclose or submit subscriber's information, traffic data, or relevant data in the possession or control of a person or service provider¹³³. On the other hand, a Warrant to Intercept Computer Data (WICD) is granted to authorize LEA to listen, record, monitor, or surveil the content of the communications through electronic eavesdropping or tapping devices, at the same time the communication is occurring¹³⁴.

Furthermore, a Warrant to Search, Seize, and Examine Computer Data (WSSECD) is allowed in order to search the particular place for items to be seized and/or examined¹³⁵. Lastly, a Warrant to Examine Computer Data (WECD) is to allow LEA to search a computer device or computer seized during a lawful warrantless arrest or by any other lawful method¹³⁶ such as valid warrantless seizure, *en flagrante delicto*, or by voluntary surrender.

One of the commonalities to all these warrants is that the LEA must apply for such alleging among other things the purpose of

¹³⁰ Sec. 14, , RA 10175 (Cybercrime Prevention Act)

¹³¹ Sec. 12, , RA 10175 (Cybercrime Prevention Act)

¹³² Sec. 15, RA 10175 (Cybercrime Prevention Act)

¹³³ Sec. 4.1, Rule on Cybercrime Warrants

¹³⁴ Id., at Sec. 5.2.

¹³⁵ Id., at Sec. 6.1.

¹³⁶ Id., at Sec. 6.9.

the warrant, the relevance and necessity of the computer data or subscriber's information sought to be disclosed/intercepted/searched, seized, and examined; particular description of the computer data or subscriber information that is subject to the warrants; and the manner of execution of the warrant¹³⁷. However, for WECD, the application must be verified¹³⁸.

Another commonality is the standard for its issuance, which is a probable cause to believe that the facts upon which the application for such warrant exists¹³⁹. Furthermore, a return must be filed and to turn over the custody of the data subject of the warrant¹⁴⁰. However, for WSSECD, an initial return is required and for the LEA to provide a reasonable estimation of the period for the examination of the items seized¹⁴¹.

CREDIT INFORMATION CORPORATION (CIC) AND CREDIT SCORING

The CIC was created under the Credit Information System Act of 2008, ("CISA") ¹⁴². The law aims to address the need for a centralized and reliable credit information system in the Philippines. ¹⁴³ The previous

¹³⁷ Id., at Secs. 4.3, 5.3, 6.2, & 6.9.

¹³⁸ Ibid.

¹³⁹ Id., at Secs. 4.4, 5.4, 6.3 & 6.9

¹⁴⁰ Id., at Secs. 4.5 & 5.5.

¹⁴¹ Id., at Sec. 6.6

¹⁴² RA 9510, (Credit Information System Act)

¹⁴³ Sec. 2, RA 9510, (Credit Information System Act)

lack of available credit information made lending and borrowing activities difficult. Loan applications were either delayed or denied; and if granted, lenders would impose unconscionable interest rates to buffer credit risks.¹⁴⁴

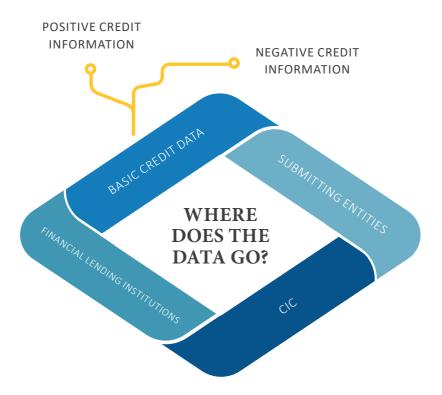
Under the CISA, the CIC is tasked to receive and consolidate basic credit data from entities providing credit facilities, called *submitting entities*, which is defined broadly enough to refer to any entity that provides credit facilities, such as banks, quasi-banks, trust entities, investment houses, financing companies, cooperatives, nongovernmental, microfinancing organizations, credit card companies, insurance companies and government lending institutions, and other institutions considered eligible by the CIC.145 Basic credit data contains both positive and negative credit information about the borrower. Positive credit information refer to timely payments, repayments, non-delinquency, and other similar data¹⁴⁶; while negative credit information are those concerning the poor credit performance of borrowers such as, but not limited to defaults on loans, adverse court judgments relating to debt and reports on bankruptcy, insolvency, and corporate rehabilitation.¹⁴⁷ These data are then made available to the financial lending institutions, with the consent of the borrower, to better assess credit risk when needed; as well as to the borrower himself.

¹⁴⁴ Raynan E. Larosa, CIC Paves Way for Credit Information System, The Philippine Star, July 12, 2016, archived at https://home.kpmg.com/content/dam/kpmg/ph/pdf/topofmindarticles/2016/July/ CICPavesWayForCreditInformationSystem 12July2016.pdf

¹⁴⁵ Sec. 3(q), RA 9510, (Credit Information System Act); Rule 4.1, Implementing Rules and Regulations to RA 9510

¹⁴⁶ Sec. 3(m), RA 9510, (Credit Information System Act)

¹⁴⁷ Id., at Sec. 3 (j),



Most of the data gathered by CIC come from banking institutions. However, this poses a problem because according to BSP, only two in ten families have been saving their money in banks.¹⁴⁸ Thus, the credit information provided by the CIC might not accurately reflect a borrower's actual capacity to pay.

¹⁴⁸ Melissa Luz T. Lopez, "Majority of Filipino Households Unbanked: BSP Survey", *BusinessWorld Online*, January 14, 2017, http://www.bworldonline.com/content.php?section=Finance&title=majority-of-filipino-households-unbanked-bsp-survey&id=139076

With the rise of FinTech platforms, there could be more data on an individual's willingness and ability to pay that may not be reflected in formal credit information with banking institutions. Platforms such as peer-to-peer lending and crowdfunding actually provide alternative credit systems to allow borrowers to bypass traditional financial intermediaries, thus not needing a credit score to be able to avail of loans. 149 Mobile payments and online payment facilities allow individuals and businesses to directly transfer funds without the intervention of a banking facility. A credit scoring service for the "unbanked" called Juan Credit has already been launched last 2017, in partnership with Bayad Center. All pertinent payment information is made available to banks, financing companies, and insurers for the benefit of those Filipino who avail of Bayad Center services.¹⁵⁰ Thus, obtaining information from these FinTech platforms and expanding the data collection on the part of CIC could allow more Filipinos who do not have access to banking financial services, to be able to participate in these activities.

[&]quot;See Asia's Top 7 Peer-to-Peer Lending Platforms", Fintechnews Singapore, June 29, 2016, http:// fintechnews.sg/3518/crowdfunding/asias-top-7-peer-peer-lending-platforms

¹⁵⁰ Fintech Ranking, "Ayannah Launches Juan Credit, an Al-powered Credit Scoring Service for the Unbanked in Emerging Markets," March 2, 2017, http://fintechranking.com/2017/03/02/ayannah-launches-juan-credit-an-ai-powered-credit-scoring-service-for-the-unbanked-in-emerging-markets/

INFORMATION SECURITY STANDARDS

BSP Circular 808 provides a framework on information technology risk management. It applies to banks, non-bank e-money issuers (EMIs), and other non-bank institutions, which under existing BSP rules and special laws are considered as BSFIs.¹⁵¹ These may also apply to FinTech companies if they will eventually be categorized as either a bank or a BSFI.

Under the Circular, banks and BSIs are required to establish a robust IT risk management system.¹⁵²

However, they should be particularly wary of five key areas provided under the law.

INFORMATION SECURITY

BSP Circular 808 requires the establishment of an Information Security program, ¹⁵³ which includes:

¹⁵¹ Sec. X176.2, BSP Circular 808-13

¹⁵² Id., at Sec. X176.7.

¹⁵³ Id., at Appendix 75B-3.2.1.



1 Establishment of physical security measures to prevent equipment from damage, unauthorized access, power failures, and electrical supply interference, among other things. 154



2 Establishment of an effective process to manage user and authentication and access control. 155



3 Implementation of an effective password rules and stronger authentication methods for transactions of higher risk. 156



4 Ensure that all media are adequately protected; and 157



5 Establishment of a secure process for disposal and destruction of sensitive information in both paper and electronic media.¹⁵⁸



6 Ensure that a sufficient number of backup copies of essential business information, software, and related hardcopy documentation should be in place. 159



7 Establishment of a recovery site for their business operations in case their business functions become unavailable. 160



8 Use of reliable methods for originating new customer accounts. As such, the KYC requirement is strictly adhered to;¹⁶¹



Ensure that appropriate measures are in place to ascertain the accuracy, completeness, and reliability of e-services transactions, records and information. 162

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Id., at Appendix 75C-13.1.

¹⁵⁹ Id., at Appendix 75D-3.3.2.12.

¹⁶⁰ Id., at Appendix 75D-3.3.2.13.

¹⁶¹ Id., at Appendix 75E-4.1.1.

¹⁶² Id., at Appendix 75E-4.1.5.

Complying with Circular 808 is beneficial for FinTech companies. First, it reduces the risk of losing money arising from problems with service or product delivery. Second, it reduces the risk of having a negative public opinion, which would affect the companies' ability to establish new relationships. Third, the BSP may impose monetary and non-monetary sanctions for those who don't comply. Finally, since FinTech companies would set up their own IT risk management systems anyway, it is better for them to comply with Circular 808. Indeed, FinTech companies have more to gain in compliance than non-compliance.

¹⁶³ Id., at Sec. 176.6..

¹⁶⁴ Id., at Sec. X176.9.

¹⁶⁵ Ted Cordero, "BSP to Issue Enhanced Policy on Banks' Cyber Security Risk Management", GMA News, August 18, 2017, http://www.gmanetwork.com/news/money/economy/622409/bsp-to-issue-enhanced-policy-on-banks-cyber-security-risk-management/story/

DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (DICT)

The Department of Information and Communications Technology (DICT) is the primary policy, planning, coordinating, implementing, and administrative entity of the Executive branch of the government that will plan, develop, and promote the national ICT development agenda. 166 The DICT has the power to formulate, recommend and implement national policies, plans, programs and guidelines that will promote the development and use of ICT with due consideration to the advantages of convergence and emerging technologies.¹⁶⁷ The DICT must also assist and provide technical expertise to government agencies in the development of guidelines in the enforcement and administration of laws, standards, rules, and governing ICT.¹⁶⁸ The DICT must also prescribe the personnel qualifications and other qualification standards essential to the effective development and operation of government ICT infrastructures and systems.¹⁶⁹ The DICT may also establish guidelines for public-private partnerships in the implementation of ICT projects for government agencies. 170

The Act creating the DICT places the department as the primary government agency in the development of the use of ICT. The DICT has provided for rules and regulations on Migrating to the

¹⁶⁶ Sec. 5, RA 10844 (Department of Information and Communications Technology Act of 2015)

¹⁶⁷ Id., at Sec. 6 (I)(a)

¹⁶⁸ Id., at Sec. 6(III)(h)

¹⁶⁹ Id., at Sec. 6(III)(j)

¹⁷⁰ Id., at Sec. 6(IV)(p)

Government Web Hosting Service¹⁷¹, guidelines on the GovMail Service for Philippine Government Agencies¹⁷², and the Philippines Government's Cloud First policy¹⁷³, among other things. These guidelines and rules issued by the DICT provide for how the government utilizes technological advances and how the DICT sees the proper implementation of such advances to different government agencies.

The DICT has a crucial role in selecting and adopting technology standards for the government. This can have a significant impact on public procurement, and it can shape the FinTech market through public endorsement and network effects that will be made available to those services that comply with the adopted standards. Should the government adopt a technology standard for payments in the public sector, financial intermediaries who hope to capture this business would have to adopt the same standard. This leads to the standards being imposed upon other players whether they are solely act in the private sector or if they also plan on interfacing with the government.

The DICT is also given the power to create guidelines on partnerships between public and private entities, allowing the DICT to control the relations between FinTech companies and the government in the integration of FinTech Services.

¹⁷¹ DICT Memorandum Circular No. 2015-001

¹⁷² DICT Memorandum Circular No. 2015-002

¹⁷³ DICT Department Circular No. 2017-002

THE PHILIPPINE IDENTIFICATION SYSTEM ACT (PHILSYS)

The Philippine Identification System Act creates a central identification platform for all citizens and resident aliens in the Philippines. This system is composed of the PhilSys Number (PSN), the PhilSys Registry, and the PhilID. The PSN is the randomly generated, unique, and permanent identification number that will be assigned to every citizen by birth or by registration. The PhilSys Registry is the repository and custodian of all data. The PhilID is the physical medium issued to convey essential information of a person such as the PSN, full name, sex, blood type, marital status (optional), place of birth, front facing photo, date of birth and address.

FinTech companies rely on personal information. For example, they need to assess a person's credit worthiness through the collection of relevant information when granting loans. Moreover, they must also comply with the BSP's KYC requirements. Financial institutions, including FinTech companies, are mandated to establish the identity of their potential clients and review the account activity of their existing customers.¹⁷⁴

With the PhilID, the KYC process is foreseen to be fast tracked as all citizen and resident aliens are required to register personally with their birth certificate as the only basic documentary requirement for

¹⁷⁴ *eLegal*, "Understanding KYC Compliance: Cost Third-Party Reliance, and Outsourcing", available at https://elegal.ph/understanding-kyc-compliance-costs-third-party-reliance-and-outsourcing/ (last

identification. The card in itself is sufficient proof of identity to open bank accounts and avail financial services, as provided in Sec. 13 of the said law. Consequently, the presentation of the PhilID to FinTech institutions must be honored and accepted, subject to authentication.

It must be noted that any person or entity, including FinTech companies, may be subjected to a fine in the amount of PHP500,000 should they refuse to acknowledge the PhilID, without just and sufficient cause, as the **only** identification of the possessor.¹⁷⁵ Moreover, the law only allows the disclosure, collection, or use of the information of registered persons under the specified circumstances only¹⁷⁶ and the law penalizes the unauthorized and willful use or disclose of the data.¹⁷⁷

With the implementation of the National ID system, FinTech companies could also expect an increase in the number of clients. Unemployed and unbanked Filipinos will be able to avail of the financial services FinTech companies provide, since it will be easier for them to acquire government-issued proof of identity. This will likewise reduce the cost of credit mitigate risks.

visited August 23, 2018).

¹⁷⁵ Sec. 19, RA 11055 (Philippine Identification Systems Act)

¹⁷⁶ Id., at Sec. 17.

¹⁷⁷ Id., at Sec. 19(2).

III.

CONSTRUCTING A TAXONOMY OF FINTECH

There is a wide variety of FinTech companies offering different services—not only digital versions of existing transactions, but also new arrangements enabled by technology. Analyzing each permutation for possible applicability of existing financial regulations will be impractical. In order to make the analysis more manageable, this study will cluster FinTech services based on a process that can capture as many permutations of FinTech services, but at the same time, ensure that the resulting categories can be sufficiently differentiated based on distinct regulatory regimes. It is possible to classify FinTech services along dimensions such as: modes of interaction, methods of data processing, and ways of monetization.¹⁷⁸ While these may be useful for technology-oriented studies,

¹⁷⁸ Henner Gimpel, et al., Understanding Fintech Start-Ups - A Taxonomy of Consumer-Oriented Service Offerings, 11-15, Electronic Markets, 2017.

the classifications produced under these methods will be too broad for any meaningful legal analysis.

This publication adopts the process of taxonomy construction proposed by Professor Eickhoff and his team¹⁷⁹—to date one of the most detailed and exhaustive efforts to organize the FinTech sector. The approach involves analyzing companies tagged as FinTech (by themselves or by the media), and then extracting a taxonomy through the following process:

Step 1

Drawing from existing literature on business models to identify useful dimensions for classification, discarding those that do not sufficiently differentiate FinTech companies.

Based on their review of the literature, Prof. Eickhoff and his team identified the following dimensions:

- 1. Dominant technology component
- 2. Value proposition
- 3. Delivery channel
- **4.** Customers
- **5.** Revenue stream
- 6. Product or service offered

¹⁷⁹ Matthias Eickhoff, et al., What do Fintechs actually do? A Taxonomy of Fintech Business Models,
Proceedings of the 38th International Conference on Information Systems, South Korea 2017, http://aisel.aisnet.org/icis2017/EBusiness/Presentations/22.

Using a sample of tagged FinTech companies, they identified characteristics that would locate individual companies along any of the above dimensions, merging characteristics with similar meanings, if necessary. For example, possible characteristics for the dimension of revenue stream can include: pay per use, revenue share, sales, subscription, or others/unknown.

Step 3

Organize the tagged FinTech companies based on the characteristics in the previous step, and identify the typical patterns of business models based on clustering around key characteristics and dimensions.



If necessary, iterate through the previous steps until formal conditions for taxonomy construction are satisfied, e.g.: mutual exclusion, conciseness, robustness, etc.

The process involves not only looking at conceptual models based on the literature, but validates them based on actual behavior and structure of the market. This means that any proposed taxonomy will have to be continually refined based on technological or economic developments, or customized to reflect the conditions of a local market. For this study, we refined the results of Professor Eickhoff's methodology and identified the following categories for Philippine FinTech companies:



Each category will be defined based on their functions in the Philippine financial system, as well the features and behavior of local FinTech services. The legal analysis to determine applicable norms will likewise be structured around these categories.

IV.

LEGAL ANALYSIS

A. PAYMENTS AND REMITTANCE

A critical function of a financial system is the transfer of value from one party to another (e.g. between buyers and sellers, or through remittances). This may also include related services such as clearing, authentication and verification. In the traditional financial sector, these functions can be performed by both banks and non-banks (i.e. remittance companies). FinTech enables platforms that transfer values without these traditional intermediaries, faster and with lower transaction costs. These services may also employ "e-money" or "virtual currencies", including the use of Blockchain to record the transfers of value (embodied in cryptocurrency).

PAYMENTS

There are legal consequences to the act of payment, and the law regulates both the form and manner of payments. Payment is one of the ways to extinguish an obligation.¹⁸⁰ Under Art. 1249 of the Civil Code, the payment of debts in money shall be made in the currency stipulated, and if not possible to deliver such currency, then in the currency which is legal tender in the Philippines. The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired. ¹⁸¹

Payments performed or facilitated by banks and non-banks may be under the auspices of the National Payment Retail System (NPRS) created by BSP Circular 980. The framework covers all domestic payments which are denominated in Philippine Peso, and which may be for payments of goods and services, domestic remittances or fund transfers. The PESONet, which is a batch electronic fund transfer credit (EFT) payment stream, is the first automated clearing house (ACH) under the NRPS. The NRPS relies heavily on inter-government agency collaboration and industry participation to bring about a safe, efficient, affordable, and reliable retail payment system. The NRPS is envisioned to bring about an interoperable ecosystem allowing seamless electronic fund transfers and payments between and among accounts. Funds can be made available to the recipient account/s within the same banking day or immediately upon

¹⁸⁰ Art. 1231, RA 386 (Civil Code)

¹⁸¹ See Tibaja Jr., v. Court of Appeals, G.R. No. 100290, 4 June 1993

¹⁸² Bangko Sentral ng Pilipinas, "BSP Launches Pesonet", August 11, 2017, http://www.bsp.gov.ph/publications/media.asp?id=4529

clearing. Payees receive the funds transferred in full and shall not pay for electronic crediting to their accounts. Moreover, for greater transparency and to help clients determine which EFT products offer the best value for their money, all participating BFSIs are required to disclose to BSP the details of all fees that will be charged to their clients. A bulletin board of fees will then be posted at the BSP website. ¹⁸³

THE NATIONAL PAYMENT SYSTEMS ACT

Congress recently passed RA 11127, or the National Payment Systems Act¹⁸⁴, strengthening the BSP's mandate to regulate payment systems in the country. The law aims to protect payment systems from becoming a vector for systemic risks, in order to ensure the stability of the country's financial system. It can also boost the adoption and reliability of payment systems by maintaining that any settlement made in accordance with the agreed procedures of a payment system shall be final and irrevocable.¹⁸⁵ The law defines a payment system as "the set of payment instruments, processes, procedures, and participants that ensures the circulation of money or movement of funds".¹⁸⁶ This definition is broad enough to cover many actors in the FinTech industry engaged in payment and remittance services, since they are operators or issuers of payment systems. Service

¹⁸³ Ibid.

¹⁸⁴ RA 11127 (National Payment Systems Act)

¹⁸⁵ Id., at Sec. 15.

¹⁸⁶ Id., at Sec. 4(p).

providers—"entities that provide technology and infrastructure to operators of a payment system"¹⁸⁷—are also covered.

Under the law, the BSP can designate any payment system as "posing or having the potential to pose a systemic risk." Designated payment systems are required to secure prior authority from the BSP, 189 and may be subject to control and regulation from the central bank. For example, they may be required to incorporate as a stock corporations, and comply with minimum requirements set by the Monetary Board. 190 The Monetary Board may issue rules and regulations governing matters such as the standard of operation of payment systems, the adequacy of resources of operators of designated payment systems, the appropriate measures to ensure confidentiality of payment information and compliance with the AMLA, and the principles on pricing mechanisms in payment systems. Principles on setting prices or pricing mechanisms in payment systems;

The BSP may accredit or require participants in a designated payment system to organize a management body for the purpose of self-regulation.¹⁹¹ Alternatively, the central bank may "in order to avert disruptions in payment systems which may adversely affect the country's monetary

¹⁸⁷ Id., at Sec 4(r).

¹⁸⁸ Id., at Sec. 6(a).

¹⁸⁹ Id., at Sec 6(b)(1).

¹⁹⁰ Id., at Sec. 11.

¹⁹¹ Id., at Sec. 6(c).

and financial stability", designate a manager to direct the operations of a designated payment system. 192

In a statement released on 22 February 2019, the BSP announced that the approval by the Monetary Board of streamlined licensing requirements for BSP-supervised financial institutions that intend to offer electronic payment and financial services. Those institutions provide basic services or those that enable clients to access information on their deposit, loan, and other accounts, or receive funds in electronic means shall simply notify the BSP within 30 days prior to the launch of those services. Prior BSP approval is required only for those advanced services which allow clients to transfer funds from one account to another and initiate other financial transactions. 194

REMITTANCE

A remittance business is one that transfers funds or facilitates the movement of funds or monetary instruments from the sender or originator to a receiver or beneficiary locally and/or internationally and undertaken by any financial institution. A Remittance and Transfer Company (RTC) refers to any entity that provides Money or Value

¹⁹² Id., at Sec. 17.

¹⁹³ Bangko Sentral Streamlines Licensing Requirements for Electronic Payment and Financial Services, Bangko Sentral ng Pilipinas, 2019. http://www.bsp.gov.ph/publications/media.asp?id=4949

¹⁹⁴ Id.

¹⁹⁵ BSP Circular 942, s. 2017

Transfer Service (MVTS). MVTSS refers to financial services that involve the acceptance of cash, checks, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network. An RTC may be a Remittance Agent (RA), a Remittance Platform Provider (RPP), or an EMI. 196

The business of remittance and transfer is primarily governed by BSP Circular No. 942, s. 2017. It provides for rules and requirements that govern the operations and reporting obligations of non-bank entities engaged in remittance, money changing, and/or foreign exchange dealing, pursuant to AMLA and the New Central Bank Act. Under the Circular, all RTCs should satisfy a benchmark capital in order to register with the BSP and commence operation. Under this classification, RTCs are divided into two types: Type A (at least PHP50 million) and Type B (less than PHP50 million). EMIs (classified as type C) are required to have capital of at least PHP100 million. RPP (Type D) are required to have a benchmark capital of at least PHP10 million. Money Changers (MCs) and Foreign Exchange Dealers (FXDs) are also divided into two types: Type E (at least PHP10 million) and Type F (less than PHP10 million). The Circular also seeks to control large payout sums by limiting the amount of large value payouts to PHP500,000 or its foreign currency equivalent, in any single transaction with customers or counterparties, and that if the amount is bigger than PHP500,000, it shall only be made via check payment or direct credit to deposit accounts. It also provides for reportorial requirements and penalties for non-compliance with the rules.

VIRTUAL CURRENCY (VC)

A VC is a digital representation of value that can be transferred, stored, or traded electronically and that is neither issued by a central bank or public authority, nor necessarily attached to a fiat currency (dollars, euros, etc.), but is accepted by people as a means of payment.¹⁹⁷

VCs use their own denomination (e.g. Bitcoin). They are not scriptural, electronic, digital or virtual forms of a particular currency—but something distinct from known currencies. Except in Japan¹⁹⁸, no virtual currency has so far been declared the official currency of a state, nor do any physical formats, backed by law, have a legal tender capacity. Therefore, no creditor is obliged to accept payment with it to discharge a debtor of its debt. This means that virtual currencies can be used only as contractual money, when there is an agreement between buyer and seller in order to accept a given virtual currency as a means of payment.

The BSP recognizes that once fiat currency is exchanged or converted into VC, it becomes easily transferable, facilitating expedient movement or transfer of funds and payment services, among others. In this manner, they are considered similar to RTCs, as provided for under Section 3 in relation to Section 11 of AMLA, as amended, and its RIRR, as well as implementing regulations issued by the BSP.¹⁹⁹

¹⁹⁷ Joshua Baron, Angela O'Mahony, David Manheim, & Cynthia Dion-Schwarz, *National Security Implications of Virtual Currency: Examining the Potential for Non-state Actor Deployment*. RAND Corporation, 2015. https://www.rand.org/pubs/research_reports/RR1231.html.

¹⁹⁸ Ken Yagami, Japan: A Forward Thinking Bitcoin Nation. Forbes, 2017. https://www.forbes.com/sites/ outofasia/2017/11/02/japan-a-forward-thinking-bitcoin-nation/#360a189733a3

¹⁹⁹ Sec. 1, BSP Circular No. 944

BSP Circular 944 also require VCs to obtain a certificate of registration from the BSP to operate similar to an RTC as mandated by BSP Circular 942 Series 2017. Further, the guidelines also require that large-payouts of more than PHP500,000 in any single transaction to be made only via check payment or direct credit to deposit accounts.

To protect consumers, the guidelines require VCs to put in place an adequate risk management and security control mechanisms to mitigate the technology risks associated with virtual currencies. Moreover, BSP requires exchanges to submit reports to the BSP such as audited financial statements, reports on total volume of virtual currencies transacted, and list of operating websites and offices. Delay or failure to do so would subject the exchange to appropriate sanctions.

Given the novelty of the technology, legislation may be required to create both new rights and obligations, as well as new institutional arrangements to respond to its ramifications.

Prior to such legislation, however, regulatory agencies are constrained to act only within the parameters of current law: First, to protect the public against fraud and other illicit activities; Second, to maintain trust in areas where cryptocurrencies interact with conventional financial institutions.

ELECTRONIC MONEY

EMIs are BSP-regulated institutions authorized to store monetary value in electronic accounts which may be remotely accessed through a device such as a mobile phone or prepaid card. The stored monetary value is convertible to and from physical cash in authorized loading or top-up stations and is acceptable as payment for goods and services by participating merchants.²⁰⁰ An EMI is an entity that issues monetary value as represented by a claim on it issuer that is (a) electronically stored in an instrument or device; (b) issued against receipt of funds of an amount not lesser in value than the monetary value issued; (c) accepted as a means of payment by entities other than the issuer; (d) withdrawable in cash or equivalent. Under BSP Circular No. 649 s2009, the governing regulation that covers non-bank institutions registered with the BSP that act as money transfer agents is \$4511N of the MOR-NBFI. Such section, provides among others that the institution be a stock corporation with a minimum paid-up capital of PHP100 million. Moreover, they must also secure a quasi-banking license of the BSP. On the other hand, BSP Circular No. 942 s2017 entirely deleted and amended MOR-NBFI, §4511N. Before, §4511N only classifies the institutions it covers into three, namely: foreign exchange dealers, money changers, and remittance agents. The amended section further expanded this classification: MC/FXDs, remittance sub-agents, and remittance and transfer companies. RTCs are further subdivided into three: RAs, RPPs, and EMIs. BSP Circular No 942 also amended Appendix N-8 of MOR-NBFI. The application now involves a

²⁰⁰ Nick Davies, "E-Money and Electronic Payments: Foreign Investment in the Philippine Financial Technology Sector", *Lexology*, March 7, 2018, https://www.lexology.com/library/detail. aspx?g=31018994-b818-4de3-9e84-c03649ffb175.

two-stage procedure. Stage 1 is a preliminary screening process for BSP to determine if applicant is eligible for registration. In Stage 2, the eligible applicant is invited to submit supporting documents to complete the registration process.

As of February 28, 2019, the BSP has granted a total of 44 EMI licenses broken down as follows based on BSP classification: 31 EMI-Banks, 2 EMI-NBFI, and 11 EMI-Others. Below are some of the EMI-Others that currently operate in the country:

- ◆ Alipay Philippines (formerly HelloPay)
- DC Pay (trading as coins.ph)
- ◆ GPay Network Philippines (trading as GrabPay)
- ◆ G-Xchange Inc: GCash (trading as GCash owned and operated by Globe FinTech Innovations, Inc. or 'Mynt')
- Inforserve Inc.
- LuluPay
- **PayMaya Philippines Inc.** (part of Voyager Innovations)
- SpeedPay, Inc.
- Starpay Corporation
- TrueMoney Philippines, Inc.
- ♦ Wirecard eMoney Philippines, Inc.

There is a host of EMIs in the country offering different kinds of services. Most local banks do this with their stored value prepaid cards²⁰¹. EMIs not only facilitate payments but can act as stores of value. As such, they are regulated by the BSP, and are required to verify their users through a KYC protocol. The new user must provide certain points of information and a valid ID, as well as schedule a face to face meeting with an agent physically or through technology-enabled tools e.g. video chat, for further verification. Once this process is done, the user can then enjoy the multiple functions the e-money app has to offer.

As for FinTech companies, numerous functions can be done within their respective apps. Most companies allow topping up online through banking apps and offline top-up via barcode in stores and over the counter in partner outlets (7-Eleven, Remittance centers, Banks etc.) After topping up, some apps allow the user to cash-out their money through cash pickup or withdrawals in ATMs. Being run on a mobile phone, there is also the option to buy load through the app, with some apps even offering load purchasing from all networks.

As for payments, users are given the convenient option to pay bills through their app and scan Quick Response (QR) codes for when they are shopping in physical stores, with some companies having thousands of partner merchandisers accepting this. Shopping online is made more convenient with the option to pay in some e-commerce sites with one's mobile wallet.

²⁰¹ Most local banks are also authorized EMIs with their stored value prepaid card products (eg. BPI, BDO etc). Comprehensive list can be found on the BSP website. See http://www.bsp.gov.ph/banking/emi.pdf

While used mostly through the mobile app, there is also an option to make use of the financial services through Facebook Messenger. Additionally, the barrier for usage has been further lowered as some of these mobile wallets even offer the users free access to the app in the absence of internet connection or mobile data.

Technological advancements have made the use of e-money faster and more seamless. Now, users can perform a number of financial transactions without leaving the app. Safety has also been improved since some functions run on blockchain, meaning a user's transactions will be constantly recorded and stored in a non-alterable manner.

Example of technologies being used by EMIs:



Smartphones with Internet connectivity



Merchant Point-of-Sale (POS) payment solutions



QR technology

Mobile phones can be used for instant
payment in numerous physical stores



Biometric identification

Newer, more developed technology allows a user to be verified in a much shorter amount of time



Blockchain

Distributed ledger records transactions between parties in a non-alterable way, making the transactions safer 202

CLASSIFICATION OF PAYMENT SYSTEMS

The payment systems can also be classified by the existence of a central regulatory body and whether transaction is limited to a specific client. A centralized payment scheme is one where it is regulated by a central authority. Transactions are verified by the central authority.

A decentralized system is one that does not rely on a central body to regulate and confirm payment transactions between parties. A closed payment system is restricted to a small number of participants. The use of the payment system or the object used as payment is limited to certain transactions and to a specific merchant or company. This enables much

²⁰² Marco Insiti & Karim R. Lakhani, "The Truth About Blockchain", Harvard Business Review. Harvard University, January 2017, https://hbr.org/2017/01/the-truth-about-blockchain.

faster individual transactions with many additional controls. An open payment system, on the other hand, is one that can be widely used across different clients and transactions. It allows multiple participants and different parties.

The table classifies the existing payment schemes in the Philippines according to open vs. closed, and centralized vs. decentralized. EMIs are regulated by the BSP and can be used as payment across different platforms. Gift cheques and telecommunication loads passed to users of the same company are considered as closed payment modes. VCs are decentralized, as there is no central authority which regulates the issuances or transactions using virtual currencies.

	CENTRALIZED	DECENTRALIZED
OPEN	EMI	VC
CLOSED	Gift checks ²⁰³ , "Pasa-load"	VC

²⁰³ RA 109621 (*The Gift Check Act of 2017*), prohibits the issuance of gift checks with expiry dates on the stored value, credit, or balance of the gift certificate.

IMPACT ON FINTECH

The EMI regulations were written with payments in mind. It insulates not just the parties transacting, but also the public, from risk. It creates a trust relationship, which makes the payment system reliable. The current regulations on VCs, on the other hand, are not structured to recognize and regulate the transfer of VCs as payments. Instead, they are treated as remittance. Remittance regulations assume that there are always RTCs in the loop, and subject to regulation. Although some VC offerings can have centralized points of contro—this is not always the case. In open, permissionless systems (such as Bitcoin), the transfers are made not through the intervention of any entity but by the automated operation of the Blockchain's protocols. Once a majority of the system's nodes reach a consensus as to the status of a transaction, the system itself ensures that the transaction is irreversible. This goes against the model of remittance regulations, which assumes a central entity with granular control over each transaction.

VC transactions and regulations are also intended to mimic the activities of FXDs which explain the similar requirements for remittance companies. The term 'exchange' in VC exchanges is used similar to FX. The FX license of BSP, however, contemplates that the forex company is a counterparty. But VC exchange also contemplates order book exchange. As such, the VC company is not a party to the transaction but merely matches potential buyers and sellers. This characteristic poses different risks, and is regulated by the SRC and not the BSP. This overlap should be looked into upon to confer jurisdiction to the proper agency for regulation.

CHALLENGES CURRENTLY FACED

Onboarding users into Fintech platforms, such as mobile wallets, can be challenging due to the long KYC process. The KYC process can be faster seamless more technology enables this without sacrificing verity. Video chatting lets the user verify themselves from wherever they are showing "proof of life", and the introduction of the National ID will provide stronger yet simpler verification on the part of the user.

Getting cash into their wallet is also inconvenient for most users. With low penetration of bank accounts and credit cards, getting cash in to the wallet quite often requires going to a physical outlet.





Ease of and trust in e-money usage are also not very high lower-income Some users did not start out warm to the idea of a mobile wallet since cash has always remained heavily used in the Philippines. Through promotions and user education by the companies and regulatory bodies, they began to try out the functions of the mobile wallet and found out for themselves that it is a safe place for them to keep and use their money.



The poor mobile data service in certain areas also affects the usage quality of the mobile wallets. Most mobile apps rely greatly on network connection, making it difficult to use in areas where connectivity is weak. This in turn makes the use of the services slower and at times unavailable. Still, the prospect of a new mobile telecommunications provider in the Philippines, well as the newlyenacted Mobile Number Portability Act (RA 11202), could enhance greater competition and improve access and services in the mobile telecommunications market



B. CROWDFUNDING

Crowdfunding is not a novel concept; it is, in simple terms, raising money through small contributions from a large number of funders. ²⁰⁴ Fundraising activities have been customarily used to finance advocacies of non-government, charitable or religious institutions. Recently, however, the term 'crowdfunding' has been coined to refer to an emerging financial technology used to raise capital for startups and small business ventures. ²⁰⁵

This new take on crowdfunding leverages technological innovations, such as social media and mobile applications, to create "platforms" or "funding portals" that provide for accessible and convenient means to match entrepreneurs with investors.²⁰⁶ Through such, it has become a promising form of financial inclusion—providing better access to capital for businesses that traditionally face difficulty in obtaining funds from banks and other financial institutions. ²⁰⁷

A crowdfunding platform advertises investment opportunities and, in some cases, facilitates payment.²⁰⁸

²⁰⁴ Schwartz, A., "Inclusive Crowdfunding", *Utah Law Review 2016*: Westlaw.

²⁰⁵ Reuters, "EU proposes crowdfunding 'passports' in boost for fintech," March 8, 2018, https://www.reuters.com/article/eu-Fintech-regulation/eu-aims-to-boost-Fintech-with-crowdfunding-passports-Id. USL5N1QQ1WY

²⁰⁶ Joseph Long, Michael Kaufman & John Wunderlich, Crowdfunding: Blue Sky Law, November 2017: Westlaw.

²⁰⁷ Id at 1.

²⁰⁸ Id at 3.

There are three common forms of crowdfunding:

- **Common donation-based crowdfunding** efforts include fundraising for various charities and non-profits, in which case there is no financial return to contributors.
- Rewards-based crowdfunding involves persons contributing to the crowdfunding recipient's business in exchange for a product or service that the company offers. Reward-based crowdfunding, like donation-based crowdfunding, does not involve any financial or equity returns.
- Equity-based crowdfunding turns contributors—more accurately called "investors" in this context—into part-owners of the company by trading capital for equity shares. Equity-based crowdfunding plainly does involve a financial or equity return. Equity-based crowdfunding may be particularly useful for private start-ups and small businesses.²⁰⁹

These forms of crowdfunding are categorized in accordance to what the contributors get in return for his money. The donation-based model is but a simple donation with the absence of any expectation on the part of the contributor to receive anything. In the rewards-based model, the contributor receives a reward, usually a product related to the business he financed. Lastly, the equity-based model provides the contributor with a share in the revenue of the recipient.²¹⁰

²⁰⁹ Ibid.

REGULATORY ISSUES

Presently, there are no regulations that govern the activities of crowdfunding. Efforts, however, have been initiated during the previous year by the SEC to create a set of rules on the activities of crowdfunding. In late 2017, the SEC posted the draft Rules and Regulations on Crowdfunding for public comment.²¹¹ These draft Rules have yet to be approved, and until then, the laws that regulate traditional financial services, in the meantime, applies to activities of crowdfunding.

1. Donation-Based Model

Donations are primarily governed by Title III of the Civil Code. Thus, FinTech companies facilitating donation-based crowdfunding must comply with the provisions of the said law.

Art. 748 of the Civil Code requires donations exceeding the amount of five thousand pesos (PHP5,000) to be in writing, otherwise, the donation is void.²¹² For FinTech companies, this should be applied together with Sec. 7 of E-Commerce Act of 2000, which provides that when the law requires a document to be in writing, that requirement is met by an electronic document if such maintains its integrity and reliability.²¹³

²¹¹ Doris Dumlao-Abadilla, "SEC moves to regulate crowdfunding as local startups sniff around for cash," Philippine Daily Inquirer, November 24, 2017, http://business.inquirer.net/241332/sec-moves-regulate-crowdfunding-local-startups-sniff-around-cash

²¹² Art. 748, Civil Code.

²¹³ Sec. 7, RA 8792 (Electronic Commerce Act of 2000)

Furthermore, the law provides that the perfection of a donation occurs at the time the donor knows of the acceptance of the donee. Thus, it is essential that the interface of the crowdfunding platform would provide electronic means for the done to accept the donation and for the donor to know such acceptance.

2. Security-Based Model

Another significant issue in crowdfunding is whether or not the equity-based model involves sale of securities, which is a transaction regulated by the SEC under the SRC.

As previously discussed, an equity-based crowdfunding offers contributors a share of the profits of the business they are investing in. This arrangement is analogous to an investment contract—"a contract, transaction, or scheme where a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others."²¹⁵

The SRC treats investment contracts as securities. Accordingly, registration with the SEC is required before sale and distribution.²¹⁶

Going further, the *Howey Test* may be applied in determining whether or not an equity-based crowdfunding is an investment

²¹⁴ Art. 734, Civil Code

²¹⁵ Rule 3.1-1, Implementing Rules and Regulations of the Securities Regulation Code

²¹⁶ SEC v. Prosperity.com, G.R. No. 164197, January 25, 2012

contract. This test provides that the following elements must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. ²¹⁷

Looking into the nature of an equity-based crowdfunding, it may be argued that these elements are present. The business-owner is actually making an offer to potential investors, through the FinTech platform, for a share in the profits in exchange of their capital. The investor, upon choosing and investing into the business, accepts the offer and such acceptance is communicated to the business owner through the interface of the platform. Hence, there is meeting of the minds between the investor and the business owner. The funds are then transferred to the latter as an investment to the business, with the expectation from the former that he will receive profits in return.

With this, the business-owner, who will be considered an 'issuer'²¹⁸, must necessarily comply with the registration requirements²¹⁹ in Sec. 8 of the SRC, which provides:

²¹⁷ Id.

²¹⁸ Sec. 3.2, Securities Regulation Code

²¹⁹ Id., at Sec. 12.

Section 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

Nevertheless, it must be pointed out that the objective behind the creation of crowdfunding platforms is to extend financial assistance to small businesses. This means that the registration requirement under the SRC, which entails rigorous measures, will fall on small business-owners. Subjecting these small businesses and start-ups to the said rules would burden rather than aid them, defeating crowdfunding's core purpose of financial inclusion.

3. Rewards-based Model

Given the burden of complying with the registration requirement under the SRC, crowdfunding platforms may use the rewards-based model instead, wherein the contributors receive an 'item' or 'reward' as return for the funds they provided. In such case, the FinTech company is considered to be engaged in the sale of receivables where the Law on Sales under the Civil Code applies. Thus, there is neither registration nor reportorial requirements that must be complied with by the company, the contributor, or the recipient.

IMPACT ON FINTECHS

To avoid the costly and time-consuming registration process under the SRC, crowdfunding companies have resorted to selling particular items to their customers instead of a promise of a return. By structuring the transaction this way, these crowdfunding FinTechs avoid the issuance of a security and are regulated instead as sellers of commodities. However, by selling items to the general public, FinTech companies may consequently be considered as engaged in retail trade²²⁰, which is an activity regulated by the Retail Trade Regularization Act of 2000 and typically, restricted to Filipino companies whose shares are owned entirely by Philippine citizens.

The said law provides for limits on foreign equity participation in enterprises engaged in retail trade, depending on the amount of the business' paid-up capital. In particular, enterprises with a paid-up capital equivalent in Philippine Peso of less US\$2.5 million must be exclusively owned by Filipino citizens or corporations wholly-owned by Filipino citizens.²²¹

Hence, FinTech companies falling within the said threshold must comply with the aforementioned citizenship requirement.

With the current dynamics of having more international players investing on not only crowdfunding but other FinTech activities, platforms may

²²⁰ Sec. 3, RA 8762 (Retail Trade Liberalization Act of 2000)

²²¹ Id., at Sec. 5.

instead engage in wholesaling to avoid the Retail Trade Law foreign ownership restrictions. Under such arrangement, the crowdfunding platform will limit contributors to only resellers. Under Sec. 2 of the IRR of the Retail Trade Act, "sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them" is not considered as retail trade. Thus, the limitation on foreign equity will cease to apply.²²²

Another strategy adopted by crowdfunding FinTechs is to issue utility tokens as a way to avoid the application of the SRC. Yet another method would be to characterize the tokens as a promise to deliver a utility token in the future. Both mechanisms have the promise to be effective but a definitive ruling from the SEC would be beneficial to the FinTechs operating in this space. More than just encouraging initial coin offerings (ICOs), clarity in the space can provide alternative funding means that can drive much-needed investment in technology ventures. This has positive externalities in upgrading skills development and introducing management skills as foreign capital and expertise are attracted to the Philippine start-up scheme.

In every form of crowdfunding, it is critical that policymakers resolve the classification of FinTech companies as an intermediary between the contributors and the recipients—whether it falls on any traditional financial model, or it is a category of its own. In consideration of its unique features particularly to the innovations it leverages, it is then

²²² See., e.g., Marsman & Company, Inc. v. First Coconut Central Company, G.R. No. L-39841, June 20, 1988

important for a set of rules particularly regulating crowdfunding to be issued, covering all elements affecting the relationships between parties and the integrity of every transaction.

C. LENDING PLATFORMS

In the Philippines, the estimated market size of individuals who potentially have the capacity to repay loans is 17 million, this being the estimated population of persons earning an annual income in excess of PHP100,000. The figure is out of a total population of 106 million, an urban population of 47 million, and an employable population of around 24 million.

The premise of the creation of online lending platforms is simple: to facilitate an accessible system of lending and borrowing. Instead of borrowing from banks and other traditional financial institutions, borrowers can now avoid the rigorous screening process by intermediaries and find individuals willing to lend through the platform²²³.

It leverages technology and online networks to improve returns for lenders and reduce interest rates for borrowers.

²²³ Zachary Mason, "Online Loans Across State Lines: Protecting Peer-To- Peer Lending Through the Exportation Doctrine," Georgetown Law Journal, November 2016, Westlaw

Companies that currently engage in online or digital lending share several common characteristics. First, lenders typically dispense with paper application forms in favor of digital versions delivered online or through an app. The documentary requirements sought from borrowers are considerably less than those required by banks, with just one government ID and one document evidencing capacity to pay usually sufficient. The minimum information required by lenders in these forms corresponds with the information required under AMLA. Digital channels are employed as well to remind borrowers of their payments due.

Second, the loan amounts involved in digital lending for first-time borrowers tend to be small, as the lenders tend to serve segments that have little-to-no verifiable credit history. Typical loan amounts tend to be small—between PHP500 to PHP10,000. Automated workflows enable much faster loan approval periods than those of traditional lenders.

Third, credit scoring or underwriting makes use of the automated processing of "Big Data" or non-financial data, such as self-declared demographic data, social data (social media, e-mails), location/GPS data, psychometric data, and even metadata associated with the loan application (such as the amount of time taken to completely fill-out loan application forms. The time and resources allocated for processing the small loan amounts are necessarily reduced.

Within the lending business, there are multiple categories that extend beyond the extension of loans. The lending life-cycle involves the following stages: leads generation, application intake, credit scoring, disbursement, repayment, and re-availment. Across these stages in the life-cycle, there are two main categories of financial technology. The first

is the loans marketplace, which covers leads generation and application intake. FinTech companies that fall in this category engage with potential borrowers, ensuring that these borrowers complete their user profiles and loan applications. In the process, these companies are able to organize user information and refer these users who will benefit from the volume and cleanliness of the data. Examples of companies under loans marketplace are Lendr, Loansolutions.ph, eCompareMo, and GoBear.

The second category is the digital lenders, with such covered activities as funds management, marketing, KYC, credit evaluation, loan funding, collections, and re-availment. These companies undertake the provision of loans to customers and manage the business and operations activities surrounding the covered activities. Examples of companies who perform digital lending services are Cashalo, Tala, Pera Agad, and GCredit.

Online lending companies facilitate the perfection of a contract of loan, or in some business models, enter into such contracts themselves. It may be a mere enabler, the lender or borrower, depending on how the FinTech company structures itself. Under the Civil Code, a "loan" is a contract wherein one of the parties delivers to another, money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid²²⁴.

The promise to pay is the consideration for the obligation in a contract of loan. The lender is the person who delivers the money, while the borrower is obligated to pay the lender the same amount.

NEW LAWS SUPPORTING MICRO, SMALL, AND MEDIUM ENTERPRISES

The Personal Property Security Act (RA 11057) signed into law on August 17, 2018, seeks to enable financial institutions to rethink how they view collateral and reduce the perceived risks. It provides a protection framework to govern lending transactions that involve the use of personal property as collateral, as well as the design, establishment, and operation of a unified, centralized, online notice-based national collateral registry. This wil assure banks that the collateral being submitted has not already been utilized for another loan. The law can bring growth to both micro, small, and medium enterprises (MSMEs) and to our financial institutions, and enjoin banks to take part in MSME development with less risk by expanding their opportunities to offer collaterals for loans. These reforms have the potential to increase credit access for women and small businesses, reduce the risks of non-satisfaction of debt and thereby lower the cost of borrowing, and reduce the rate of non-performing loans of financial institutions.²²⁵

The Revised Corporation Code of the Philippines (RA 11232) does away with the minimum capital stock requirement for stock corporations, except as otherwise specifically provided by special law. It also permits an individual to form a one-person corporation. The allowance of one-person corporations make it easier for small to medium-sized business owners to incorporate, thus providing a viable alternative for sole proprietors.

PEER-TO-PEER LENDING

One of the major regulatory issues that should be emphasized is the prohibition on peer-to-peer lending. In a platform matching individual borrowers with individual lenders, the latter will be offering to the public lending services. As such, they will be engaged in the lending activities described in the Lending Act, and engaging in the business of a lending company. They are thus considered lending investors, as they will be granting loans to borrowers in the course of business. These lending activities of the lenders, given that the same are done as a business activity, thus squarely lands within the ambit of "engaging in the business of a lending company" which under the Lending Company Act may only be engaged in with license from the SEC or the BSP, whichever is applicable. Unless, the Individual Lenders have such licenses, they are prohibited from engaging in this lending activity.

This prohibition hinders one of the primary objectives of online lending platforms—providing immediate financial assistance to individuals. A deeper research and understanding by the regulatory agencies are recommended regarding this matter in order to further wider financial inclusion.

DIGITAL PLATFORMS AND MASS MEDIA/ ADVERTISING RESTRICTIONS

In a letter dated 6 December 2018 addressed to the Managing Director of FINTQnologies Corp. Lito Villanueva, the SEC Chairman, Hon. Emilio B. Aquino confirmed that an online lending platform such as Lendr, which does not conceptualize, create, conduct, produce, implement or give counsel on any promotional campaigns or programs for and in behalf of a BSFI, and does not select or recommend to the BSFI the medium or media to be used as the vehicle for disseminating messages to the public, is not deemed to be engaged in mass media or advertising.

This advisory from the SEC Chairman clarifies SEC-OGC Opinion No. 18-21 dated 28 November 2018, on whether the display of logos of supervised financial and non-bank financial institutions on the digital platform of an online lender would be considered as engagement in advertising or mass media. As earlier noted, the question is crucial, as the Philippine Constitution imposes significant nationality restrictions on both activities – 70% Filipino ownership to engage in the advertising industry, and 100% Filipino ownership for corporations engaged in mass media. This SEC opinion is undoubtedly a breakthrough in the Philippine FinTech industry.

LENDING COMPANIES UNDER LENDING COMPANY ACT

The Lending Company Act primarily governs the activities of a lending company. The law provided for the definition of a lending company, which states:

Lending Company shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than 19 persons. It shall not be deemed to include banking institutions, investment houses, savings and loan associations, financing companies, pawnshops, insurance companies, cooperatives, and other credit institutions already regulated by law. The term shall be synonymous with lending investors.

A lending platform may be interpreted to be engaged in the business of lending, thus, a lending company, if it holds the fund in its own name and its own account. In such case, the lending platform becomes the borrower of the investors and the lender of the individual or business borrower.

Being a lending company means that it must necessarily comply with the requirements of the Lending Company Act. One of which is that it must be incorporated with the SEC with the stated principal purpose that it is engaged in the activity of granting loans to the public. It also proscribes engaging in the business of a lending company without a validly subsisting authority to operate from the SEC. The company is also required to have a minimum capitalization of PHP1 million, and majority of its stockholders must be Filipino citizens. It must also comply with the Truth in Lending Act²²⁶ which requires that the borrowers should be furnished a statement

with information on the amount of the principal loan, rate of interest, amortization schedule, and penalty charges, among others.²²⁷

If the lending platform sources its funds from more than nineteen (19) lenders, it may then be deemed as 'Quasi Bank'. Quasi-Bank refers to a non-bank financial institution authorized by the BSP to engage in quasi-banking functions and to borrow funds from more than 19 lenders through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Section 95 of Republic Act No. 7653 (the New Central Bank Act:) for purposes of relending or purchasing of receivables and other obligations."

Deposit substitutes are defined under the New Central Bank Act as follows:

"Section 95. Definition of Deposit Substitutes. The term 'deposit substitutes' is defined as an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations. These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, participations, certificates of assignment, and similar instruments with recourse, and repurchase agreements. The Monetary Board shall determine what specific instruments shall be considered as deposit substitutes for the purposes of Section 94 of this Act: Provided, however, that deposit substitutes of commercial, industrial, and other non-financial companies for the limited purpose of financing their

own needs or the needs of their agents or dealers shall not be covered by the provisions of Section 94 of this Act."

QUASI-BANKS

The FinTech company will be deemed as a quasi-bank if it will use the funds, from the 19 lenders, for relending to the borrowers. In such case, it will be required to obtain a quasi-banking license from the BSP.

It must be noted that these laws may apply only if the FinTech company keeps the funds from the lenders in its own account. In the case wherein the company merely facilitates the matching of lenders with borrowers, the Lending Company Act and the New Central Bank Act will not apply.

With the convenience brought forth by FinTech, banks are starting to use technology in offering their services, such as granting of loans. Lending platforms ran by banks are then regulated by the Monetary Board of the BSP under the New Central Bank Act, which ensures the maintenance of liquidity and insolvency of banks. It is within the authority of the Monetary Board to provide for maximum permissible maturities of the loans and investments which the banks may make, and the kind and amount of security to be required against the various types of credit operations of the banks.

The aforementioned regulation subjects FinTech companies to strict requirements, thus, limiting the range of services it can provide. However, through the agencies' licensing mechanisms, trust is easily earned by the companies from the public and, at the same time, protects the latter from fraud.

D. ALTERNATIVE TRADING VENUE

One of the main functions of a financial system is to provide a venue where parties can trade or exchange financial assets. This includes the creation of a marketplace for financial assets which must be organized and registered under applicable laws. The SRC's IRR, define the concept of an "organized marketplace" or "organized market" as an "exchange, an over-the-counter market, alternative trading system, or otherwise recognized as such by the SEC, and governed by, among others, transparent and binding rules and market conventions on membership, trading, price transparency, trade reporting, market monitoring, and orderly conduct or operation of the market which are enforceable on the members and participants." This definition presents the different modalities of this function, including the two main modalities present in the traditional financial system—exchange and the over-the-counter market.

MODALITIES

The first modality is exchange. The SRC's IRR defines an exchange as "an organized marketplace or facility that brings together buyers and sellers, and executes trades of securities and/or commodities." An example of such would be the stock exchange. Presently, an Exchange has to comply with the regulations prescribed under the SRC. The second modality is the over-the-counter (OTC) market. The SEC published Memorandum Circular No. 14, Series of 2006, which defined an OTC Market as "the market created by the buying and selling of a security on a bilateral basis

between parties that takes place outside of an Exchange or Alternative Trading System."²³⁰

The same Circular provides the registration requirements and the rules to be followed in order to utilize this particular modality. Applying this definition of an OTC market, it may be said that the foreign exchange counters fall under this category. As opposed to exchange as earlier defined, in this modality, the exchanger maintains its own inventory of foreign currency. The BSP has released Circular No. 471, which prescribes the rules and regulations that must be followed in the registration and operations of foreign exchange dealers/money changers.

However, with the continuous progress of ICT in the country, an alternative venue has been developed for facilitating trade in the financial markets. The advent of FinTech has introduced new modalities where exchange and trade of financial assets may be done with more ease and convenience. With the use of FinTech in what was a main function of the traditional financial system, there is more flexibility, accessibility and security in trading financial assets. Arguably, the alternative marketplace developed through FinTech may be comparable to existing modalities. Therefore, the rules and regulations governing the modalities as discussed may likewise apply to the alternative-trading venue facilitated by FinTech.

FOREIGN EXCHANGE

Money changing or foreign exchange dealing is presently governed by the MOR-NBFI. As amended by BSP Circular No. 942, the Manual provides the following definition for MC-FXD dealing, "the buying or selling of currencies in exchange for another currency." The Circular in question intends not only to regulate and govern upon MC-FXDs but also other entities such as RTCs and remittance sub-agents (RSA). Section 4511N.1 (a) defines a remittance and transfer company as "any entity that provides Money or Value Transfer Service." This service covers financial services and transactions using different types of monetary or other instruments of value. On the other hand, a remittance sub-agent is defined as "any person authorized by the RTC to perform certain relevant undertakings in the remittance business." Therefore, entities engaged in FinTech which may be involved in the transfer and facilitation of movement of funds or instruments are likewise governed by the regulatory provisions of the Circular. Such regulation covers not only registration requirements but notification requirements, reportorial requirements, and other transactional requirements. FinTech companies that may classify as any of the financial institutions regulated by this BSP Circular must observe all these rules

STOCK/COMMODITIES EXCHANGE

Stock exchanges, a significant component of the country's present financial system, are covered by the regulatory provisions under the SRC. Exchanges, as earlier defined, include entities which provide a venue for buyers and sellers to interact and those that facilitate trade of financial assets. FinTech companies that engage in such activities should arguably be regulated by the same SRC provisions. Significantly, under the definition provided by

the IRR of the SRC, Exchanges do not only pertain to stock exchanges but also entities engaged in the trade of commodities. Therefore, FinTech institutions that engage in similar activities as these Exchanges presently regulated by the SRC, may be covered by the same rules. The provisions of the IRR of the SRC regulating Exchanges cover requirements prescribed for registration of the entity as an Exchange. It covers the requirement for uniform regulations to be implemented among Exchanges or other trading markets and the authority of the SEC to determine the attributes of Exchanges such as their number, size, and location. Significantly, it specifically provides for registration and licensing of more innovative markets. Rule 37 states, "The Commission having due regard for national economic development, shall encourage competitiveness in the market by promulgating within six months upon the enactment of the Code, rules for the registration and licensing of innovative and other trading markets or Exchanges covering, but not limited to, the issuance and trading of innovative securities, securities of small, medium, growth and venture enterprises, and technology-based ventures pursuant to Section 33 of the Code." It is conceivable that FinTech companies engaged in similar activities as Exchanges may be covered by this provision.

VIRTUAL CURRENCY EXCHANGE

A direct manifestation of a marketplace implemented through technological means would be Virtual Currency Exchanges (VCEs). The onset of VCEs in the financial system provide for an alternative trading venue for parties engaged in exchange of financial assets or securities. VCEs are primarily regulated by BSP Circular No. 944, the guidelines issued by the BSP in relation to these entities. Subsection 4512N.2 defines a VCE as "any entity that offers services or engages in activities that provide

facility for the conversion or exchange of fiat currency to VC or vice versa." These guidelines necessarily cover all financial institutions that fall under such definition. With the growing integration of traditional finance and technology, it is highly necessary that new guidelines and regulations be established to address new issues which may not have been a concern in the past. Circular No. 944 in establishing regulations for VCEs manifests the response of the regulatory bodies to the advancement and innovation in traditional financial systems. The extent of regulation provided under this Circular cover not only the usual registration, transactional, and reporting requirements, but already includes regulations regarding technology risk management.

IMPLICATIONS

In applying the rules and regulations governing the existing marketplace for financial assets to FinTech companies there are both advantages and disadvantages. Implementing the above identified regulatory provisions upon FinTech companies allow the imposition of standards that will ensure that the alternative trading venue provided by advancement in technology is one that is not only convenient and accessible but also secure and compliant with applicable laws.

Particularly with Exchanges, the registration requirements and the authority of the SEC to regulate such institutions ensure a stable and reliable marketplace where parties may trade financial assets with ease and security. Further, imposing present standards on FinTech companies which engage in similar activities as current financial institutions provide an impediment to fraud and manage the influx of data in such an information-rich environment.

However, imposing present standards on FinTech companies may also be a deterrent to innovators who wish to elevate our financial systems along with the advancement in technology.

More regulations would entail additional cost on these entities and too stringent standards may likewise limit access of entities to engage in financial activities.

E. INSURANCE AND ASSET MANAGEMENT

Insurance is a legal device by which a policyholder protects his or her self from future contingent harm. On the other hand, asset management essentially provides for a store of value, which allows for capital preservation or even capital growth. Both involve management of risk and allocation of capital, and both are services that are premised on disposable funds or income. These concerns often converge in operation: Insurance companies aggregate premium payments into funds that they invest and manage. Insurance companies can also use this institutional competence to offer investment plans or hybrid insurance-investment plans.

With FinTech, these traditional insurance and asset management services are being deployed through new modalities and enhanced by information technology. Traditionally, the players in this space includes insurance

companies, investment banks, investment houses, brokers and dedicated research and analysis firms, unloading their research products and investment advice onto the investing public. What FinTech now allows is democratized access to these services, with information technology enabling users to obtain more information about such financial services, faster. Technology also changes the delivery of such services, and allows transactions costs to go down, and consequently, the provision of such services to the public at a lower cost.

This lowers barriers to participation, and increases accessibility even more.

FinTech platforms can also be used to allow the public to access insurers directly, as the Insurance Commission now already allows through its IC Circular Letter 2014-47 on "Guidelines on Electronic Commerce of Insurance Products," in lieu of tradition channels such as brokers and agents. This is particularly useful for overseas Filipino workers who will be able to access insurance products even while deployed abroad. The payment of premiums and capital infusions will also be simplified and made easier (see discussion on Payments in Part IV [a]).

Technology also allows for a much more sophisticated consideration of risk. Big data, machine learning and the Internet-of-things provide a wider and more varied base of information from which to make decisions on risk and capital allocation. All this converge to allow providers to craft financial products particularly suited to their clientele. The clarity of risk information also dispenses with the need to bake a wide margin of safety into financial products, and allows for a more precise calibration of pricing, which, as discussed earlier, directly affects market access.

INSURANCE

The insurance business is primarily governed by the Amended Insurance Code (RA No. 10607). Under Section 2 (a) of said law, a contract of insurance is defined as "an agreement whereby one undertakes for a consideration to indemnify another against loss, damage, or liability arising from an unknown or contingent event."

Said law purports to regulate not only insurance companies, but also insurance agents, insurance brokers, professional reinsurers, reinsurance brokers, holding companies, holding company systems, and mutual benefit associations. Thus, any FinTech company carrying out business so as to fall under any of these regulated entities will necessarily bring into effect the pertinent provisions of the Insurance Code.

This may include any guarantees, falling within the definition of an insurance contract, extended by a FinTech company to its users/customers in relation to the use of its financial services, even if such guarantee is only ancillary thereto. The extent of regulation that may be applied would include rules on licensing, rules on insurance policy content, and capital requirements.

In relation to such regulations, policy-makers may find that the use of technology compensates for shortcomings of the traditional modes of conducting insurance business, in turn mitigating the attendant risks. For example, under the Insurance Code, misrepresentation and concealment (Chapter I, Title 4 and 5) are perennial problems, causing a constant state of distress and uncertainty as the question persists for both the insured and the insurer.

Also, with uncertainty comes higher prices, to compensate for risks and to cover transaction costs—i.e., verifying information, expressing and enforcing contractual obligations. Using technology, perhaps a system of databases linked between information providers, could cut through and eliminate such uncertainty, allowing the parties to come together faster and at a lower cost.

Such developments may justify rewriting the rules, not just on concealment and representation, but perhaps also on licensing and tariffication, depending on how technology augments the insurance business to reduce overall risk.

Broadly, the DPA may also find application, as the entering into an insurance contract, and the risk assessment incidental thereto based on the insured's particulars, and its ensuing execution, is processing of personal information within the meaning of said law, and calls for its regulatory provisions.

INVESTMENTS, ASSET MANAGEMENT, AND FINANCIAL ADVICE

Asset management, and financial advice or wealth management for that matter, on the other hand, is less clearly regulated, there being no singular law or set of laws purporting to govern the same. Instead, the authority to provide investment advice is granted to various classes of business in their respective disparate pieces of constitutive legislation.

Under Section 53.4 of the General Banking Law (RA No. 8791, 2000), a bank may "upon prior approval of the Monetary Board, act as managing agent, adviser, consultant, or administrator of investment management/advisory/consultancy accounts." Under Section 53 of the same, in providing such service, a bank acts as a depositary or as an agent. "Accordingly, it shall keep the funds, securities and other effects which it receives duly separate from the bank's own assets and liabilities." Thus, a FinTech company seeking to provide investment advice under auspices of the General Banking Law, must, necessarily, first, be a bank.

Authority to engage in banking operations is issued by the Monetary Board. Under Section 8 of the same law, an aspiring bank must be a stock corporation, with its funds obtained from the public, which shall mean 20 or more persons, and meeting the minimum capital requirements prescribed by the Monetary Board. Section X111.1 of the MORB provides for such minimum capitalization, which ranges from PHP10 million to PHP20 billion, depending on the type of bank. A bank, under RA No. 10641 (2014), is no longer subject to any foreign ownership restrictions, and may now be owned up to 100% by foreign nationals.

An investment house may also provide financial advice. Under the Investment Houses Law (Presidential Decree No. 129, 1973), the powers of an investment house include authority to "[a]ct as financial consultant, investment adviser, or broker". As amended by RA No. 10881 (2016), the law now allows investment houses to be owned up to 100% by foreign nationals. An earlier amendment, RA No. 8366 (1997), provides for a capital requirement of PhP 300 million. Similarly, a FinTech desiring to provide investment advice under the authority of the Investment Houses Law must comply with these requirements.

Some platforms such as Wealthfront (wealthfront.com) and Nutmeg (nutmeg.com) have developed so-called "robo advisors" to craft financial advice. Necessarily, services like these must find the proper corporate vehicle and license through which they can operate. It is well to note that financial advisory is not among the professions regulated by the Professional Regulation Commission (PRC).

Apart from information products and services, FinTech has also transformed access to financial assets themselves. The Philippine market already has several operating online stockbrokers²³¹. Securities market professionals such as brokers, dealers and salesmen are licensed and regulated by the SEC under Chapter VIII of the SRC (RA 8799, 2000). Such services may also have to grapple with rules on securities registration, information security requirements, KYC requirements, and EMI/VC.

Provision of asset management services may also give rise to an agency relationship. Under Article 1868 of the Civil Code, "by the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It is doubtful whether such agency exists where the service provided is limited to information and recommendation.

However, where the provider of asset management services transacts with third persons in behalf of the investor, agency may arise. The relations of an agent to his principal are fiduciary (Severino v. Severino, G.R. No

²³¹ A list of online brokers maintained by the Philippine Stock Exchange is available at https://www.pse.com. ph/stockMarket/tradingParticipants.html?tab=0

18058, 1923), and under the law on agency (Civil Code, Book IV, Title X), agents may not put their own interests before that of their principals.

The Civil Code is also particular as to the form of agency, differentiating the effects of general agency, special agency, agency couched in general terms, and special power of attorney. A FinTech company intending to provide asset management services in a way that makes it an agent must be mindful of such legal repercussions.

FinTech has also introduced new asset classes. For example, cryptocurrencies such as Bitcoin have been seen as stores of value and objects of investment. Necessarily, these must contend with existing rules on investments, such as securities registration under the SRC and the Howey test to determine whether an instrument is an investment contract (see discussion on Crowdfunding under a securities-based model under Part IV [b]).

Similar with insurance, developments in technology may justify revisiting the rules relating to investments and asset management to assess their continuing relevance and suitability. For example, under ICA Rule 35-1 otherwise known as the Investment Company Rule, the minimum investment by any single investor in securities issued by an investment company is PHP5,000. This floor has been seen as an obstacle to the larger community preventing them from investing, as the amount puts the investment beyond the reach of ordinary low-income families.

The daily minimum wage in Metro Manila for the non-agriculture sector is PhP 537.00 (Wage Order No. NCR-22 issued by the RTPWB-NCR on 30 October 2018). This means that meeting the minimum investment

requires at least nine days of work at minimum wage. This does not even consider that most of the minimum wage is directed to meet daily living expenses, and that there are those who do not even get paid the minimum wage by their employers.

In relation to FinTech, no matter how efficient and transparent the processes become because of technology, companies still hit this regulatory wall. Recently, this has been relaxed by the SEC. In December 2017, it issued revised IRR of the Investment Company Act, which expressly amended the older ICA Rule 35-1. In the new rules, the investment floor of PHP5,000 has been supplanted, the new floor being the minimum amount the investment company elects to provide in its prospectus. This gives investment companies more flexibility to develop financial products more suited to various profiles, consistent with the lower barriers to entry that FinTech portends.

On balance, the rules affecting insurance and asset management, in providing for licensing, capitalization, and other requirements, inure to the benefit of the public consumer. These regulations help build trust in the system. In the case of insurance, the insured must have some certainty that the insurer shall make good on the policy when the condition insured against arises. In the case of asset management, risks attendant in agency are mitigated, and the interests of the client as principal and financial adviser as agent are aligned.



PENDING BILLS

The following bills are currently pending in Congress which, if passed into law, could potentially impact the activities covered by FinTech.

A. WAREHOUSE RECEIPTS

Identical bills have been filed in Congress²³² seeking to update the Warehouse Receipts Law originally enacted in 1912. Warehouse receipts are a way by which those in agricultural sector can obtain credit by storing their goods in a warehouse, by trading or encumbering the issued warehouse receipt. The new bill would enable the agricultural sector to convert goods and products in a faster and simpler way, taking advantage of modern technological advances. Among

the innovations of the bill are the allowance of electronic warehouse receipts, and the creation of an online and uniform Registry where all electronic warehouse receipts can be kept and accessed.

B. SIM REGISTRATION

The proposed SIM (subscriber identity module) Card Registration Act aims to help law enforcement agencies in tracking down criminals who use mobile phones with post-paid and pre-paid SIM cards to pursue illegal activities, such as kidnapping for ransom and petty crimes like theft. The bill mandates the sale and registration of SIM cards by directing every Public Telecommunication Entity (PTE) or direct seller to require the end-user of a SIM card to present valid identification with photo to ascertain the latter's identity.

The measure also mandates all existing mobile phone subscribers with prepaid SIM cards to register with their respective PTE. Failure to register within the prescribed period shall authorize the PTE to automatically deactivate its services to the concerned prepaid SIM card subscriber. All direct sellers will be mandated to register in the SIM card registration form the following information: full name, date of birth, gender, and address of the end-user appearing in a valid government-issued identification document with photo. The bill also requires end-users who are foreign nationals to register their full name, passport number, and address in the SIM card registration form.

It requires the PTE to submit to the DICT a verified list of their current authorized dealers/agents nationwide, within 30 days after the effectivity of the law.²³³

C. FINANCIAL CONSUMER PROTECTION

A bill which enhances the power of financial regulators relative to consumer protection has been introduced in the Philippine Senate. The proposed Financial Consumer Protection Act²³⁴ explicitly vests financial regulators, namely the BSP, the SEC, the IC, and the Cooperative Development Authority (CDA), with powers relating to rulemaking, surveillance and inspection, market monitoring, and enforcement.

New responsibilities are imposed by the Bill on entities regulated by financial regulators, such as the continuous evaluation of their financial products and services to ensure that they are appropriately targeted to the needs, understanding and capacity of both their markets and their clients, as well as disclosure principles in communications with consumers that will include the use of clear and concise language understood by the target clients. The bill also places Investment Advisers subject to the regulatory authority of the SEC.

²³³ RG Cruz. House approves bill seeking mandatory SIM card registration. ABS-CBN News, May 15, 2018, http://news.abs-cbn.com/news/05/15/18/house-approves-bill-seeking-mandatory-sim-card-registration

²³⁴ Senate Bill 1829

VI.

CONCLUSION

The basis for rational policymaking and the modern administrative state is that legal requirements are supposed to address specific problems or channel behavior towards desirable outcomes. The regulation of the country's financial sector is in place to encourage stability, build trust, and promote inclusion of traditionally underserved sections the public.

The existing regulatory regime does not occur in a vacuum. Provisions of the law are shaped by the constraints and affordances of technological capabilities, as well as the power and economic relations between incumbents and newcomers.

FinTech services do not simply mean applying computers to traditional financial transactions. The convergence of widespread connectivity, cost-effective computing, and advanced data analysis give

rise to new modes of financial services that meet policy goals through technology and contract instead of law. However, these new platforms involve actors, objects, and transactions that overlap with the taxonomy of traditional financial services.

When jurisdiction lines are blurred, the rules and requirements for traditional financial institutions will be applied to FinTech companies. Since policy preferences could be embedded in FinTech through less onerous means, the reflexive application of old regulations to new tech is inefficient and self-defeating. We propose that policymakers adopt a calibrated "light touch" approach, or the delineation of a "regulatory sandbox" for FinTech. Vigilance and prudence can be balanced with innovation at ratios that still champion public welfare.

The FinTech industry should likewise not hesitate to take proactive stances in openly engaging with policymakers and regulators, to maximize greater opportunities for the latter in understanding the FinTech landscape at the ground level, so as to encourage sensible fact-based approaches towards regulation.

The December 2018 letter issued by the SEC Chairman in response to the request for a categorical opinion that FINTQ, through its Lendr platform, is not engaged in advertising or mass media in connection with SEC-OGC Opinion No. 18-21, is an example of the positive results borne out of a pro-active approach adopted by a FinTech company that led to helpful and necessary clarifications that benefit the industry as a whole.

APPENDICES



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

28 November 2018

SEC-OGC Opinion No.18-21 RE: Mass Media, Digital Platform

ANGELITO M. VILLANUEVA

Managing Director FINTQnologies Corp. 6/F Launchpad Reliance cor. Sheridan Streets Mandaluyong City, 1550PH

Dear Mr. Villanueva,

This refers to your request for opinion on whether the Lendr online platform with a "marketplace" feature, which is operated by FINTQnologies Corp. (FINTQ), a registered software development company, is engaged in advertising and/or mass media, which are considered as nationalized activities and therefore subject to nationality restrictions provided under the Philippine Law.

In your letter dated 10 September 2018, you disclosed that FINTQ developed Lendr, a digital Platform-as-a-Service (PaaS) solution to provide an option for Bangko Sentral ng Pilipinas ("BSP") – supervised financial institutions and non-bank financial institutions ("BSFI") to outsource the performance of loan-related services electronically and interactively. Specifically, Lendr is FINTQ's loans origination and management platform which provides the following services: (a) providing information about its loan products in the Lendr marketplace; (b) accepting, processing, and approving applications for such loan products; and (c) monitoring the status of loan products availed of.

The Lendr platform is accessible via the website (www.lendr.com.ph) and through a mobile-based application and offers a "marketplace" feature. As disclosed, the "marketplace" consists of a page where the logos of BSFI partners are displayed and featured.

The Lendr platform works in three major steps:

- 1) Account registration,
- 2) Loan Selection; and
- 3) Loan Approval and Crediting.

As disclosed in your letter, a consumer (who desires to avail of a financial product such as a loan) must first create an account in Lendr to become a registered user (Lendr User) and member of the Lendr community and in order to access the loan products offered by BSFIs. Once an account is created, the Lendr User may now access the Lendr "marketplace" feature which consists of a page with the Lendr BSFI partner logos. To access the information about the loan from the BSFI partner and apply for said loan, a Lendr User needs to be logged-in to Lendr. No information about the loan product of the partner BSFI can be seen by the public and only Lendr Users can view said information.

The Lendr User then chooses the type of loan he needs and applies for it by inputting the necessary information in the application form as indicated and required by the Lendr BSFI partner. Lendr provides a technology service for these partner BSFI or banks under "marketplace" feature. The BSFI that the Lendr User selects for his financial needs receives the application and decides, using its own credit criteria, processes and judgment, whether to approve the loan application or not. If the loan is approved, the BSFI directly reaches out to the Lendr User for compliance with its other requirements and the release of the loan proceeds. An SMS notification from the BSFI partner will be received by the Lendr user informing him of the approval of the loan application.

After the release of the loan proceeds, both the BSFI and the Client can monitor the status of the loan using the Lendr platform. The BSFI and the Client will be able to view the outstanding balance of the loan, its payment schedule as well as other details such as the amount and date of amortization payments already made, among others.

You now seek the opinion of the Commission on whether Lendr's digital platform, which consist of a page where the BSFI partner logos are displayed and featured as well as the services it provides, are exempt from the definition and purview of advertising and/or mass media which are considered as nationalized activities and subject to nationality restrictions provided under the Philippine Law.

The 1987 Philippine Constitution imposes foreign ownership restrictions on both advertising and mass media activities. With respect to corporations, Section 11 of Article XVI imposes the following restrictions: (1) to engage in the advertising industry, at least seventy percent (70%) of the capital must be owned by Filipino citizen; and (2) in the case of mass media, it must be one hundred percent (100%) owned and managed by Filipino citizens. 1

¹ 1987 Philippine Constitution, Article XVI, Section 11.

In order to determine the extent of allowable foreign participation for these business activities, it is necessary to ascertain whether the corporation is an advertising agency or a mass media entity.

Article 4(b) of Republic Act No. 7394 or the Consumer Act of the Philippines (Consumer Act) defines advertising as "the business of conceptualizing, presenting or making available to the public, through any form of mass media, fact, data or information about the attributes, features, quality or availability of consumer products, services or credit."²

The Commission, in previous opinions, differentiated between advertising and mass media activities, to wit:

"The function of advertising agencies is to serve as agents or counsellors of advertisers by writing, preparing, or producing the commercial messages or materials by advertisers in selling their goods and services, and by selecting and recommending the medium or media to be used as the vehicle for disseminating such messages to the public. Advertising agencies do not actually disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, i.e., newspapers, radio, television, etc., for this purpose. Advertising agencies falling within this concept are not mass media, considering that they do not operate or control any medium of communication designed to reach or influence the masses, although the activities of such agencies, by their nature, are closely related to those of mass media.

However, where the advertising agency actually disseminates information, or operates, controls or otherwise engages in the business of mass media, a specific example of which is an advertising firm which sells billboard space to advertisers, then such advertising agencies would fall within the purview of the constitutional limitation."

From the foregoing, the main function of an advertising agency is to create and/or conceptualize the content or material to be used to promote or sell the goods. It may include selecting for or recommending to its client the avenues or channels to be used in the promotion of their goods or services. However, if the advertising agency by itself disseminates to the public the promotion or advertisements using any medium of communication, it automatically becomes a mass media entity.

Mass media, as opined by the Department of Justice,⁴ refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses,⁵ the **distinctive feature of which is the dissemination of**

 $^{^{\}rm 2}$ The Consumer Act of the Philippines. Approved on 13 April 1992.

³ SEC Opinion 17-07 dated 24 July 2017, addressed to Gorriceta Africa Cauton & Saavedra citing SEC Opinion No. 12-16 dated 13 September 2012, addressed to Puno & Puno Law Offices citing SEC Corporate Legal Department Opinion dated 02 September 1988.

⁴ DOJ Opinion No. 40, series of 1998; cited in SEC-OGC Opinion No. 11-08 dated 03 March 2011.

⁵ MOJ Opinion No. 24, s. 1986, citing MOJ Opinion No. 120, series of 1982.

information and ideas to the public, or a portion thereof.⁶ The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation.⁷ (Emphasis and underscoring supplied).

Particularly, in the aspect of promotions and advertisements, the Consumer Act defines mass media as "any means or methods used to convey advertising messages to the public such as television, radio, magazines, cinema, billboards, posters, streamers, hand bills. leaflets. mails and the like."8

The Commission, in several opinions, summarized what constitutes "mass media," viz:

"On the other hand, the term 'mass media' shall mean the gathering, transmission of news. information. messages, signals, and forms of written oral and all visual communications and shall embrace the print medium, radio, television, film, movies, wire and radio communication services, advertising in all its phases, and their business managerial. It embraces means of communications which reach and influence large number of people xxx The term 'mass media' in the Constitution, refers to any medium of communication, a newspaper, radio, motion pictures, television, designed to reach the masses and that tends to set standards, ideals and aims of the masses." (Emphasis and underscoring supplied).

An entity, therefore, is deemed engaged in mass media if (1) it disseminates information to the general public and (2) such information are designed to affect or influence the people's way of thinking and lifestyle.

At present, mass media includes Print, Broadcast (collectively referred to as traditional media), and Electronic/Digital Media, as defined in Republic Act No. 9211 (RA 9211).10

In RA 9211 or the "Tobacco Regulation Act of 2003," electronic media was included in the concept of mass media, viz: $\frac{1}{2}$

"Mass Media – refers to any medium of communication designed to reach a mass of people. For this purposes, mass media includes print media such as, but not limited to, newspapers, magazines, and publications; broadcast media such as, but not limited to radio, television, cable television, and cinema; electronic media such as but not limited to the internet." [Emphasis and underscoring supplied].

⁶ Ibid.,

⁷ *Ibid.*, citing Quisumbing-Fernando, Constitutional Law, 1984 ed., p. 345.

⁸ Id., at Note 1.

⁹ SEC Opinion No. 27-04, dated 26 April 2004, addressed to Atty. Arnold M. Caga citing SEC Opinion dated 15 July 1991 addressed to Myrna Cruz-Feliciano.

¹⁰ Tobacco Regulation Act of 2003. Approved on 23 June 2003.

¹¹ Ibid., Section 4(f).

In the SEC *en Banc* decision of *In Re: Rappler, Inc., and Rappler Holdings Corporation,* ¹² the Commission considers internet or online media as Mass Media pursuant to RA 9211, to wit:

"The term 'Mass Media' was not further defined in the Constitution itself, evidently to adapt to changing times and to new technologies that may arise after 1987. Precisely to adapt to changing times, wide discretion has been given to the legislature and to administrative agencies. Today's legislature considers internet or online media a type of Mass Media. The Commission, an administrative agency, has followed the lead of the legislature and considers internet or online media as Mass Media and subject to the Foreign Equity Restrictions of the Constitution.

XXX

What matters to the Commission in determining what is 'mass media' is the transmission of information to the masses through 'any medium of communication,' which includes technologies that were not present at the time the Constitution was drafted (e.g. Internet, Mobile Technology, and Social Media) but are nonetheless embraced by the spirit and intent of the law, which is to prevent foreigners from wielding influence over the minds of the Filipino people." (Emphasis and underscoring supplied).

It is worth mentioning however, that the recently issued 11th Foreign Investment Negative List, noted that "internet business" is not deemed as Mass Media pursuant to DOJ Opinion No. 40 series of 1998. "Internet business" as noted, refers to <u>internet access providers</u> that merely provides internet connection and not creators of messages/information. As to the other aspects of the internet, wherein information is transmitted to and intended to influence the masses, these are still covered by the definition of mass media. 13

These principles and points of law were applied in the following OGC Opinions. In SEC Opinion No. 12-16, the Commission posited that a corporation engaged in the operation of a voucher platform on the internet with the purpose of increasing the sales of a particular product or service is engaged in mass media. This was later affirmed and expounded on by SEC Opinion 14-06, to wit:

"With the continuing evolution and proliferation of digital communication technology, i.e. internet and mobile technology, individuals now are exposed to information that are previously restricted to a select group, making them susceptible to the influence of modern mass media techniques such as advertising and propaganda. Thus, the internet and mobile technology have become a

¹² SP Case No. 08-17-001, 11 January 2018.

¹³ Executive Order NO. 65, Eleventh Regular Foreign Investment Negative List. Approved on 29 October 2018.

¹⁴ SEC Opinion No. 12-16, dated 13 September 2012, addressed to Puno & Puno Law Offices.

recognized platform for mass media. In our jurisdiction, the Tobacco Regulation Act of 2003 specifically includes the internet in the definition of 'mass media.'

Moreover, your letter states that <u>Komli intends to provide a digital platform to third-party websites to sell and monetize online inventory</u>. Although Komli will not own or operate any online media outlet nor will affiliate with any internet service provider, online retailer or social networking site and will merely act as middleman by bringing together the product manufacturers and third-party websites, <u>it will provide an online platform intended to increase the sale of a particular product</u>. In SEC Opinion No. 12-16 this Commission opines that <u>if the corporation is engaged in the operation of a voucher platform on the internet with the purpose of increasing the sales of a particular product or service, it in effect disseminates information to the general public through the internet and is thus considered a mass media entity subject to the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution and list A (1) of Executive Order No. 858,*15 (Emphasis and underscoring supplied).</u>

Komli was considered to be engaged in mass media as it provides a digital platform to the third-party websites to sell and monetize their online inventory which apparently is available to the public.

Although we appreciate the extensive discussion of your business model in your letter, we hesitate to issue a categorical opinion/ruling as an online platform content can be variable and mutable. It is more prudent to provide guidance instead.

In order for an online or mobile app platform operator (which renders service to third-party clients) not to be deemed as engaged in <u>advertising activities</u>:

- It does not write or prepare commercial messages or materials for the products of their third-party clients to be posted in their platform or mobile app.
- 2. It does not select for or advise their third-party clients what medium or vehicle to use to disseminate the advertising materials and commercial messages.

Further, for an online or mobile app platform operator (which renders service to third-party clients) not to be deemed as engaging in <u>mass media activities</u>:

 There is no pervasive or indiscriminate display to the general public of any promotional materials or advertisements on the products or services being offered by the third-party clients or even the platform or mobile app itself.

¹⁵ SEC- OGC Opinion 14-06, dated 08 May 2014, addressed to Atty. Alvin O. Geli and Atty. Regina G. Santos.

- Only the following information may be made available in the app, website or platform:
 - a. enumeration of the services offered by the platform itself;
 - b. Instruction on how to use the said platform;
 - c. Enumeration of third party partner, and this shall only be limited to the listing of the name or logo of the third-party client.
 - d. Any other information on the platform required to be disclosed by any law or regulatory measures.
- The disclosure of the products and services offered by its third party clients is only for the purpose of completing the transaction enabled by the app, website or platform.

Please be guided accordingly.

General Counsel



Republic of the Philippines Department of Finance Securities and Exchange Commission

06 December 2018

ANGELITO M. VILLANUEVA

Managing Director FINTQnologies Corp. 6/F Launchpad Reliance cor. Sheridan Streets Mandaluyong City, 1550PH

Dear Mr. Villanueva,

This refers to your letter dated 29 November 2018 reiterating your request for a categorical opinion that FintQ, through its Lendr platform, is not engaged in advertising or mass media in connection with the recently issued SEC-OGC Opinion No. 18-21 dated 28 November 2018. We are also made to understand that a categorical ruling will determine the business direction of FINTQ, moving forward, locally.

Please be informed that SEC's power to issue opinions is based on Section 5.1(g) of R.A. 8799 or the Securities Regulation Code, the purpose of which is to provide guidance to the general public (and not any one particular business entity). Cognizant, however, of the anticipated contribution of the Lendr platform to interest rate discovery and transparency in the financing/lending space, we make an exception.

To sum up, your letters (i.e. dated 29 November 2018 and 10 September 2018) disclosed the following: FINTQ developed Lendr, a digital Platform-as-a-Service (PaaS) solution to provide an option for Bangko Sentral ng Pilipinas ("BSP") – supervised financial institutions and non-bank financial institutions ("BSFI") to outsource the performance of loan-related services electronically and interactively. Specifically, Lendr is FINTQ's loans origination and management platform which provides the following services: (a) providing information about its loan products in the Lendr marketplace; (b) accepting, processing, and approving applications for such loan products; and (c) monitoring the status of loan products availed of.

¹ Securities Regulation Code. Approved 19 July 2000.

A prospective borrower must first create an account in Lendr to become a registered user (Lendr User) and member of the Lendr community. Further, to access the information about the loan products of the BSFI partner and apply for a loan, the Lendr User needs to be logged-in to his/her account. Thus, no information about the loan product of the partner BSFI can be seen by the public and only Lendr Users can view said information. In addition, the Lendr user can also filter loan offers per loan product type (e.g. personal loan, salary loan, OFW loan, etc.).

You emphasized in your letter that FINTQ does not conceptualize, create, conduct, produce, implement or give counsel on any promotional campaigns or programs for and in behalf of the BSFI and does not select or recommend to the BSFI the medium or media to be used as the vehicle for disseminating messages to the public.

Based on the facts disclosed, FINTQ is deemed compliant with the conditions set forth in SEC-OGC Opinion No. 18-21 dated 28 November 2018; thus, it is not engaged in mass media nor in advertising.

It shall be understood, however, that this opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and if, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Further, this Opinion does not preclude the Commission from issuing additional rules on online lending and financing in the future which FINTQ and the Lendr platform should also be compliant with.

Please be guided accordingly.

EMILIO B. AQUINO Chairperson

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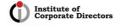


































A Tribute to the Champion of the Unbanked and Underserved

+BSP Governor Nestor "Nesting" A. Espenilla, Jr. Friday, March 1, 2019, Heritage Park, Taguig City

By: Lito Villanueva, FinTechAlliance.ph Chairman

"Keep going, Lito. The journey may be too long, but we will reach the finish line. Digital is key. Appreciate all your efforts. Thank you for the prayers." This was the last Viber message I received from Gov. Nesting.

"Keep going." His last words to me echo like a challenge. Not just for FinTech, but also for this last goodbye. Because how, in just a short tribute, can I exalt a friend and mentor who was always larger than life? His legacy eclipses all the superlatives I can use.

So passionate. So dedicated. So genuine. He was an unstoppable force behind our efforts to promote economic inclusion and digital transformation. His work has generated a shockwave of change that will surely be felt by generations to come.

He was already a trailblazer back when financial technology or FinTech was still taking baby steps. Imagine, a top regulator challenging the industry's early innovators to uplift the lives of millions of unbanked and underserved Filipinos. The Philippines was the pioneer in mobile money as early as 2000, way ahead of the successful mPesa of Kenya in 2004. It was then-Deputy Governor Nesting who crafted the regulation that became the best practice model across emerging markets. I guess the entire banking and finance industry would agree that Governor Nesting Espenilla is the righteous father of mobile money regulation.

He was convinced to initiate financial inclusion and digital transformation collaborations between BSP and the private sector. He loves to engage with people who bring out-of-the-box perspectives, unafraid to challenge the status quo with the boldest innovations.

He does not want to hear you say that regulation is a hindrance. What he wants to hear is: "Tell me your issues. I'll fix it." His mission was to make regulation dynamic, flexible, and agile to conform with the changing times for the betterment of Filipinos. His regulatory sandbox or "test and learn" regime was groundbreaking. In his context: regulation follows innovation. All these new enabling policies and recently signed laws would attest to that.

The last project he was supporting was the publication of a FinTech taxonomy. A guide for regulators, policy makers, and stakeholders, it's meant to harness the thriving financial technology industry. As our tribute to him, this FinTech Alliance publication will be launched at the BSP.

Gov. always had a soft spot for the underprivileged. He gave them his time, service and devotion. Because he wanted to. Because he was able to. And it's all thanks to Ms. Tess and their entire family for sharing him with us. *Tanggapin po ninyo ang aming taos-pusong pagpupugay at pagkilala*.

He will remain our champion and inspiration in pursuing our collective journey in engaging and empowering the unbanked and underserved.

Gov. Nesting prepared the enabling landscape.

He built the runway.

Now, it's up to us to take off and "keep going" – towards a progressive and digitally-inclusive Philippines.

Rest well, Gov. Nesting. We'll take it from here. *Paalam at maraming salamat po.*