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The International Comparative Legal Guide to:

Fintech 2018

2nd Edition

A practical cross-border insight into Fintech law

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EDITORIAL

Welcome to the second edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Three general chapters. These chapters provide an overview of artificial intelligence in fintech, the regulation of cryptocurrency as a type of financial technology, and fintech and private equity.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 44 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Hong Kong has been steadily making efforts in recent years to become a fintech hub. It was one of the early adopters of device-based "stored value facilities" (prepaid instruments with monetary value) and has so far granted 13 stored value facility ("**SVF**") licences to non-bank payment service providers for device and network-based SVFs. To further enhance Hong Kong's payment infrastructure, the Hong Kong Monetary Authority ("**HKMA**") is scheduled to launch a world-leading digital retail payment system – the Faster Payment System ("**FPS**") – in September 2018. FPS will be a round-the-clock real-time payment platform, allowing banks and SVF providers to offer their customers faster and more convenient payment and fund transfer services. In particular, it will support the use of mobile phone numbers or email addresses to receive HKD or RMB funds. The banking industry is also developing a common QR code standard for mobile payments.

Hong Kong has paid particular attention to distributed ledger technology ("**DLT**"). Banks have worked with the HKMA on proof-of-concept DLT projects in areas such as trade finance, digital identity management and mortgage loan applications. In keeping with Hong Kong's role as a global trading hub, the trade finance project is being commercialised into the DLT-based Hong Kong Trade Finance Platform ("**HKTFP**") for banks to digitalise and share trade documents and automate processes with reduced risks. The HKMA and its Singapore counterpart have announced that a cross-border DLT infrastructure connecting HKTFP with a similar trade platform in Singapore will be launched in early 2019. This will digitalise trade finance between the two jurisdictions and create the potential for other trading partners to plug into the infrastructure in the future. The HKMA is also exploring the idea of a central bank digital currency and is formulating a framework to develop open Application Programming Interfaces ("**API**") for the banking sector.

The HKMA, Office of Commissioner of Insurance ("**OCI**") and the Securities and Futures Commission ("**SFC**") have each launched regulatory sandboxes. During September 2016 to December 2017, the HKMA's sandbox piloted 28 fintech products – seven in biometric authentication, four in DLT, three in soft token, two in chatbot and 12 in miscellaneous technologies including API and remote onboarding.

Finally, it is notable that Hong Kong is collaborating with Shenzhen (a leading fintech hub in China) on various initiatives, including exploring cross-border soft-landing facilities to encourage Hong Kong fintech firms to expand their businesses to the Mainland and *vice versa*. Cooperation agreements have also been signed with the UK, Dubai and Singapore regulators.

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

No particular fintech businesses are prohibited or restricted (except that fintech businesses in the gambling sector are effectively prohibited under Hong Kong's gambling legislation).

Cryptocurrencies as such are not prohibited, but the offer of cryptocurrencies to investors in Hong Kong (typically as part of an initial coin offering) may, depending on the features of the offering, be subject to Hong Kong's existing securities law regime. In addition, intermediaries providing services to Hong Kong investors in relation to investments in cryptocurrency-related investment products (such as Bitcoin futures) are likely to be regulated by the existing regulatory regime. See section 3 below for further detail.

2 Funding For Fintech

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

Generally speaking, equity funding by a small number of investors for a private company in Hong Kong is relatively simple and straightforward. However, existing regulatory restrictions in Hong Kong will need to be considered in the context of crowd funding in Hong Kong (including restrictions regarding the public offer of shares and the issue of advertisements/invitations to the public to acquire securities). See section 3 below for further detail.

Most new and growing businesses can obtain debt financing from banks and money lenders operating in Hong Kong. Peer-to-peer lending in Hong Kong may be subject to certain restrictions under the current regulatory regime – for example, under the Money Lenders Ordinance and the "regulated activities" regime under Hong Kong's securities legislation (see section 3 below).

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

While not specifically tailored to fintech businesses, the government's Innovation and Technology Fund offers various funding programmes, including a HK$2 billion Innovation and Technology Venture Fund for co-investment with private funds in local technology start-ups and a HK$500 million Technology Voucher Programme, under which local SMEs are encouraged to make use of technological solutions to improve productivity and business processes. HK$10 billion has been earmarked in the most recent budget for developing the technology sector, with fintech being a key focus area.

Other facilitation measures include the Cyberport Incubation Programme and Accelerator Support Programme, which provide funding and other support for Hong Kong digital technology start-ups.

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

Listing conditions depend on whether a business intends to list on the Main Board or the GEM Board of The Stock Exchange of Hong Kong Limited ("**SEHK**").

Main Board

For a listing on the Main Board, an applicant must meet the following key requirements (amongst others):

Financial Requirements

The applicant should generally have a trading record of at least three financial years and fulfil one of the following three criteria:

1. Profit Test:
   a. profits attributable to shareholders of at least HK$50 million in the last three financial years (with profits of at least HK$20 million recorded in the most recent year and aggregate profits of at least HK$30 million recorded in the two years before that); and
   b. market capitalisation of at least HK$500 million at the time of listing.
2. Market Capitalisation/Revenue/Cashflow Test:
   a. market capitalisation of at least HK$2 billion at the time of listing;
   b. revenue of at least HK$500 million for the most recent audited financial year; and
   c. positive cashflow from operating activities of at least HK$100 million in aggregate for the three preceding financial years.
3. Market Capitalisation/Revenue Test:
   a. market capitalisation of at least HK$4 billion at the time of listing; and
   b. revenue of at least HK$500 million for the most recent audited financial year.

Accounting Standards

Accounts must be prepared according to HKFRS, IFRS or (in the case of applicants from the Mainland of the People's Republic of China ("**PRC**")) China Accounting Standards for Business Enterprises.

Suitability for Listing

The business must be considered suitable for listing by the SEHK.

Public Float

Normally, at least 25% of the company's total number of issued shares must be in public hands, with market capitalisation of at least HK$125 million in public hands.

GEM Board

The same requirements on accounting standards and suitability for listing apply to the GEM Board, but there are less onerous financial requirements compared with the Main Board, with the key differences being:

Financial Requirements

The applicant must have a trading record of at least two financial years comprising:

1. positive cashflow of at least HK$30 million in aggregate immediately preceding the issue of the listing document which is generated from the ordinary course of business; and
2. market capitalisation of at least HK$150 million at the time of listing.

Public Float

The same 25% public holding applies, but with market capitalisation of at least HK$45 million in public hands.

Weighted Voting Rights

Weighted voting rights ("**WVRs**"), a common feature for technology companies, are not currently permitted by the SEHK. However, reforms are underway in this regard. The conclusions of a recent SEHK consultation have confirmed that WVRs will, subject to certain investor protection safeguards, be permitted on the Main Board for "new economy" applicants that meet a certain criteria. The criteria will include a minimum expected market capitalisation of HK$10 billion – higher than for Main Board applicants without WVRs. The new rules are expected to be implemented by mid-2018.

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

2017 saw the Hong Kong IPOs of ZhongAn Online P&C Insurance (an online-only insurtech company in China), China Literature (China's leading online literature platform) and Yixin Group (China's largest online automobile retail transaction platform).

It is expected that the SEHK's reforms on WVRs will encourage more high-profile fintech and new economy applicants to list in Hong Kong.

3 Fintech Regulation

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

There is no specific regulatory framework for fintech businesses operating in Hong Kong. Such businesses are subject to the existing body of Hong Kong financial laws and regulations.

Fintech firms which carry out "regulated activities" in Hong Kong must be licensed by the SFC unless they fall within an exemption. Types of regulated activities under the Securities and Futures Ordinance ("**SFO**") which are more relevant to fintech businesses include: dealing in securities or futures contracts; advising on securities, futures contracts or corporate finance; leveraged foreign exchange trading (which broadly covers forwards); providing automated trading services; securities margin financing; and asset management.

In addition, the new regulated activities relating to OTC derivatives (dealing in or advising on OTC derivative products and providing client clearing services for OTC derivative transactions), which are not yet in force, may be relevant to fintech businesses operating in Hong Kong once brought into effect (the timing for this remains unclear).

The SFO regime applies to all types of entities carrying out a regulated activity, whether they provide traditional financial services or activities more typically associated with fintech start-ups, such as crowdfunding, peer-to-peer lending and automated trading platforms.

The SFC has warned (in a statement published on 5 September 2017) in relation to initial coin offerings ("**ICOs**") that:

- where the digital tokens involved in an ICO fall within the definition of "securities" in the SFO, dealing in or advising on the digital tokens, or managing or marketing a fund investing in such digital tokens, may constitute a "regulated activity";
- where an ICO involves an offer to the Hong Kong public to acquire "securities" or participate in a collective investment scheme, registration or authorisation requirements may be triggered unless an exemption applies;
- parties engaging in the secondary trading of such tokens (e.g. on cryptocurrency exchanges) may also be subject to the SFC's licensing and conduct requirements; and
- certain requirements relating to automated trading services and recognised exchange companies may be applicable to the business activities of cryptocurrency exchanges.

The SFC has also warned (in a circular published on 11 December 2017) in relation to Bitcoin futures contracts and other cryptocurrency-related investment products that:

- Bitcoin futures contracts traded on and subject to the rules of a futures exchange are regarded as "futures contracts" for the purposes of the SFO, even though the underlying assets of such contracts may not be regulated under the SFO;
- other cryptocurrency-related investment products may, depending on their terms and features, be regarded as "securities" as defined under the SFO; and
- parties dealing in, advising on, or managing or marketing a fund investing in such contracts or products, may therefore be subject to the SFC's licensing, conduct and authorisation requirements under the SFO.

In addition to the SFO regulated activities regime, other potentially relevant regulatory regimes are summarised below:

- Banking Ordinance ("**BO**")

  The BO provides:

  (i) no person shall act as a 'money broker' unless approved by the HKMA – broadly this covers entities that negotiate, arrange or facilitate the entry by clients into arrangements with banks (or the entry by banks into arrangements with third parties);

  (ii) no 'banking business' shall be carried on in Hong Kong except by a licensed bank – this covers: (a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than a specified period; and (b) paying or collecting cheques drawn by or paid in by customers; and

  (iii) no business of taking deposits can be carried on in Hong Kong except by an authorised institution.

- Money Lenders Ordinance ("**MLO**")

  A person carrying on business as a 'money lender' in Hong Kong requires a money lender's licence under the MLO. Broadly, a 'money lender' is a person whose business is that of making loans or who holds himself out in any way as carrying on that business. Certain types of loan are exempted, including loans made by a company, or an individual whose ordinary business does not primarily involve money lending in the ordinary course of that business.

- Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("**AMLO**")

  Under the AMLO, the Hong Kong Customs and Excise Department requires any person who wishes to operate a 'money service' in Hong Kong to apply for a Money Service Operator licence.

  'Money service' covers: (i) a money changing service (a service for exchanging currencies that is operated in Hong Kong as a business); and (ii) a remittance service (a service operated in Hong Kong as a business for: sending money (or arranging for such) to a place outside Hong Kong, receiving money (or arranging for such) from outside Hong Kong, or arranging for the receipt of money outside Hong Kong).

- Payment Systems and Stored Value Facilities Ordinance ("**PSSVFO**")

  The PSSVFO provides a licensing regime for the issue of 'stored value facilities'. Broadly, these are facilities that can be used to store the value of an amount of money that is paid into the facility from time to time as a means of making payments for goods or services. The regime covers both device-based and network-based facilities.

  The PSSVFO also regulates retail payment systems, but only where the failure of a particular system may result in systemic issues for the Hong Kong financial system. It is therefore not relevant to the majority of retail payment systems.

- Insurance Companies Ordinance ("**ICO**")

  The ICO provides no person shall carry on any class of insurance business in or from Hong Kong unless authorised to do so.

3.2 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested?

Financial regulators and policy-makers in Hong Kong are receptive to fintech. The government established the Steering Group on Financial Technologies in April 2015 to advise on Hong Kong's development into a fintech hub. Banking, securities and insurance regulators have each set up dedicated fintech offices and sandboxes to deal with regulatory enquiries and handle pilot trials respectively. The sandboxes of the three regulators are linked up so that there is a single point of entry for pilot trials of cross-sector fintech products.

The HKMA's supervisory approach to fintech is risk-based and technology neutral. It has established a Fintech Facilitation Office ("**FFO**") to act as an interface between market participants and the HKMA, creating a platform for exchanging fintech initiatives and initiating research on potential application and risks of fintech solutions. Four major projects have been launched by the FFO thus far:

- the Cybersecurity Fortification Initiative launched in May 2016 has developed three key pillars: (i) the Cybersecurity Resilience Assessment Programme; (ii) the Cybersecurity Intelligence Sharing Platform; and (iii) the Professional Development Programme (the initiative is further discussed at question 4.4);
- two research papers on DLT;
- the Fintech Innovation Hub; and
- the Fintech Supervisory Sandbox.

The HKMA's sandbox allows banks (together with their partnering technology firms) to conduct pilot trials of their fintech initiatives involving a limited number of participating customers without the need to achieve full compliance with the HKMA's supervisory requirements.

The SFC's approach to fintech is also technologically neutral. It has established a Fintech Contact Point and has recently established a regulatory sandbox. The SFC's sandbox is open to SFC-licensed corporations and start-ups that intend to carry on an SFO regulated activity to test the activities in a confined regulatory environment before the fintech is used on a fuller scale.

The OCI has also established a sandbox for authorised insurers, as well as a Fintech Liaison Team to enhance communication with businesses involved in the development and application of fintech.

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

The SFO licensing regime applies to all businesses carrying out regulated activities in Hong Kong, whether they are established in Hong Kong or not. A fintech business based overseas which actively markets, to the Hong Kong public, services which constitute a regulated activity, will *prima facie* be regarded as carrying on business in a regulated activity, for which a licence is required. An overseas-based fintech firm would be caught whether it is marketing by itself or through another entity and whether in Hong Kong or otherwise.

There are various exemptions from the licensing regime, including (for certain regulated activities) dealing only with professional investors, or targeting/carrying on business with a small number of investors in Hong Kong (not constituting the 'public'). An overseas fintech firm may also be able to 'deal in securities' through another entity licensed to deal in securities or is a Hong Kong licensed bank. There are specific requirements in order to fall within the exemptions and specific legal advice in the context of the particular facts should be sought.

The SFO also prohibits overseas firms issuing to the Hong Kong public any advertisement or invitation to acquire securities and other specified products unless prior SFC authorisation is obtained. The definition of "advertisement" is very broad and includes every form of advertising, whether made orally, electronically or by any other means. There are a number of exemptions, including one relating to professional investors. Again, specific legal advice in the context of the particular facts should be sought.

In addition to the SFO regime, fintech businesses intending to operate in Hong Kong, whether or not they are established here, should comply with (or fall within an exemption to) the regulatory regimes under the BO (which includes restrictions on deposit advertisements), MLO, AMLO, PSSVFO and the ICO referred to in question 3.1. The extent to which these regimes apply to a fintech firm will depend on the specific nature of the firm's operations.

4 Other Regulatory Regimes / Non-Financial Regulation

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

The Personal Data (Privacy) Ordinance ("**PDPO**") establishes a principles-based regime which regulates the collection, holding, processing and use of personal data in Hong Kong.

Fintech businesses in Hong Kong which are "data users" (defined as persons who control the collection, holding, processing or use of personal data) are regulated by the PDPO. The principles which data users must observe mainly relate to notification requirements at the time of collection of personal data, accuracy and duration of retention of personal data and security and access to personal data. There are also particular restrictions regarding the use of client lists to market products.

In addition to the PDPO, the Privacy Commissioner for Personal Data ("**Commissioner**") has published industry guidance on the proper handling of customers' personal data, including for those in the banking industry. The Commissioner has issued guidance in relation to the collection and use of personal data through the internet, use of portable storage devices, online behavioural tracking and 'cloud computing'; and has issued an information leaflet on physical tracking and monitoring through electronic devices.

Unsolicited direct marketing by electronic means is also covered by the Unsolicited Electronic Messages Ordinance, which applies to electronic commercial messages with a 'Hong Kong link' including those to which the PDPO does not apply. This would cover messages sent by fintech entities to promote their services or investment opportunities over a public telecommunications service to electronic addresses.

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

Although the PDPO does not have extraterritorial application, it applies to foreign organisations to the extent they have offices or an operation in (including agents located in) Hong Kong. The PDPO applies to data users that are able to control the collection, holding, processing or use of personal data in or from Hong Kong.

The PDPO contains a restriction on the transfer of personal data outside Hong Kong and transfers between two other jurisdictions where the transfer is controlled by a Hong Kong data user, although this restriction has not yet been brought into force. The restriction, once in force, will prohibit the transfer of personal data from Hong Kong to a place outside Hong Kong unless one of a number of conditions is met, including: the data user taking all reasonable precautions and due diligence to ensure the data will not be dealt with in a manner that would contravene the PDPO; transferring to a place which has data protection laws similar to the PDPO; or where the data subject has consented in writing to the transfer.

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

Failure to comply with the PDPO could potentially result in the following sanctions:

- Regulatory action: the Commissioner may investigate complaints of breaches of the PDPO, initiate investigations and issue enforcement notices. A data user who contravenes an enforcement notice is liable to a fine and imprisonment.
- Criminal liability: the PDPO contains a number of criminal offences, for example, failure to comply with requirements of the Commissioner, disclosing personal data without consent for gain or causing loss or in relation to direct marketing. Maximum penalties for breaches under the PDPO are fines of up to HK$1 million and five years' imprisonment.
- Civil claims: individuals who suffer loss as a result of their personal data being used in contravention of the PDPO are entitled to compensation by the data user. The Commissioner

may also institute civil proceedings against any data user that fails to comply with an enforcement notice.

- Reputational risk: the results of any investigation, the name of the organisation involved and details of the breaches may be published by the Commissioner.

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

In Hong Kong, cybersecurity is dealt with through a range of laws and regulations, including the PDPO and criminal law. There are various criminal offences relating to cybersecurity, such as: damaging or misusing property (computer program or data); making false entries in banks' books of accounts by electronic means; unauthorised access to a computer with intent to commit an offence or with dishonest intent; and unlawfully altering, adding or erasing the function or records of a computer. Although there is currently no mandatory data breach notification requirement in Hong Kong, the Commissioner has provided data users with guidance on practical steps in handling data breaches and mitigating the loss and damage caused to the individuals involved.

The Cyber Security and Technology Crime Bureau of the Hong Kong Police Force is the department responsible for handling cyber security issues and carrying out technology crime investigations and prevention. It has established close links with local and overseas law enforcement agencies to combat cross-border technology crime.

The HKMA has launched several significant measures to strengthen cyber resilience in the banking sector, putting Hong Kong on par with international standards. The "Cybersecurity Fortification Initiative" aims to raise the level of cybersecurity among banks in Hong Kong and will provide an improved framework for banks to evaluate risk exposure to help ensure better prevention and detection of cyber security incidents. Entities that are regulated as licensed corporations by the SFC are equally expected to take appropriate measures to critically review and assess the effectiveness of their cybersecurity controls. The SFC has issued a circular setting out certain key areas that licensed corporations should pay close attention to when reviewing and controlling their cybersecurity risks, as well as certain controls that such corporations should consider implementing where applicable, and has also recently issued guidelines to mitigate hacking risks associated with internet trading.

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

International standards of anti-money laundering and counter-terrorist financing are set by the Financial Action Task Force ("**FATF**"). As a member of the FATF, Hong Kong implements recommendations promulgated by this inter-government body to combat money laundering and terrorist financing.

Local legislation dealing with money laundering and terrorist financing includes: AMLO, Drug Trafficking (Recovery of Proceeds) Ordinance ("**DTROP**"), Organized and Serious Crimes Ordinance ("**OSCO**") and United Nations (Anti-Terrorism Measures) Ordinance ("**UNATMO**").

In addition to the requirements discussed under question 3.1 above, the AMLO imposes on financial institutions (including licensed corporations, banks and other authorized institutions and insurance companies) customer due diligence and record-keeping requirements, while DTROP, OSCO and UNATMO require reporting of suspicious transactions regarding money laundering or terrorist financing and prohibit related dealing activities.

The SFC, HKMA and the OCI have each issued guidance to financial institutions on designing and implementing anti-money laundering and counter-terrorist financing policies and controls to meet AMLO and other relevant requirements.

The Prevention of Bribery Ordinance is the primary anti-corruption legislation in Hong Kong. It is directed at the corruption of public officers (public sector offences) and corrupt transactions with agents which includes employees of private companies (private sector offences).

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

In addition to the legal and regulatory regimes described above, fintech businesses will, depending on the nature and structure of their operations, also be subject to other laws, including: business registration (if carrying on business in Hong Kong); Hong Kong Companies Registry registration (if having a place of business in Hong Kong); and Hong Kong tax laws (noting that corporate income tax applies only to locally sourced profits – not worldwide profits).

5 Accessing Talent

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

The requirements for the hiring or dismissal of employees in Hong Kong are not particularly onerous. In relation to hiring employees, a written employment contract is advisable but not strictly required in most cases (although a written notice of certain key terms may be required upon request by an employee). Notification to the Inland Revenue Department is required within three months of commencement of employment. Collective agreements and trade unions arrangements are not compulsory and are relatively uncommon in Hong Kong.

Unless there are grounds for summary dismissal (such as habitual neglect of duties), a statutory minimum notice period (or payment *in lieu*) will apply to a notice of termination of an employment contract, and statutory severance or long service payment (but not both) may be payable up to a statutory maximum amount of HK$390,000. Statutory severance is payable to an employee (with minimum two years' continuous service) who is made redundant. Long service payment is payable to an employee (with minimum five years' continuous service) who is dismissed for any reason other than summary dismissal unless he is already entitled to severance payment.

The employer must notify the Inland Revenue Department (and the Immigration Department if the employee's working visa is sponsored by the employer) of the dismissal. There are no other particular dismissal procedures which must be observed under Hong Kong legislation, but employers must follow any internal company procedures that may form part of the employment terms.

Employers must not dismiss certain protected categories of employees (such as pregnant employees) or in contravention of anti-discrimination laws (e.g. on gender, race and disability). Employees with a minimum of two years' continuous service have a right to make a claim in a labour tribunal for dismissal without a "valid reason", being: the conduct of the employee; his or her capability or qualifications to perform the role; redundancy or other genuine operational requirements; continued employment would be unlawful; or any other reason of substance in the opinion of the tribunal. In practice, unless the dismissal is of a protected category of employee, the remedy which a tribunal may award is usually limited to any unpaid termination entitlements the employee should have received.

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

There is a statutory minimum hourly wage (at HK$34.5 with effect from 1 May 2017) which applies to most workers in Hong Kong.

The key mandatory employment benefits include:

- enrolment in a mandatory provident fund, with a monthly contribution from each of the employer and employee of 5% of the employee's income. The mandatory element of the monthly contribution by each of the employer and employee is currently capped at HK$1,500. The requirement does not apply to foreign nationals with an employment visa who are either working in Hong Kong for 13 months or less, or belong to an overseas retirement scheme;
- maternity leave (10 weeks) and paternity leave (three days). Employees with more than 40 weeks' continuous service are entitled to 80% pay during such leave;
- paid annual leave and sickness allowance for qualifying employees; and
- employers must take out insurance in relation to employees' work-related injuries, but there are no compulsory medical benefits.

Note, certain statutory rights are applicable only to "continuous" employees (those who have worked for 18 or more hours per week for at least four consecutive weeks).

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

Individuals who are not Hong Kong permanent residents would generally require an employment visa to enter Hong Kong for employment purposes under the General Employment Policy ("**GEP**") (or the Admission Scheme for Mainland Talents and Professionals for nationals of the PRC). The GEP is quota-free and non-sector specific. The visa must be sponsored by the employer in Hong Kong, who must demonstrate the application fulfils certain criteria, including that the applicant is employed in a job relevant to his academic qualifications or work experience that cannot be readily taken up by the local work force.

Individuals who wish to establish or join fintech businesses or start-ups in Hong Kong may also consider an 'investment as entrepreneur' visa. Such applications may be favourably considered if the applicant can demonstrate they: (i) are in a position to make a substantial contribution to the Hong Kong economy (by reference to, for example, their business plan, financial resources, investment sum and introduction of new technology or skills); or (ii) wish to start or join a start-up that is supported by a Hong Kong government-backed programme and the applicant is the proprietor or partner of the start-up or a key researcher.

There is also a quota-based Quality Migrant Admission Scheme which seeks to attract highly skilled or talented persons to settle in Hong Kong in order to enhance Hong Kong's economic competitiveness. Applicants are not required to have secured an offer of local employment but are required to fulfil a set of prerequisites under a point-based test.

6 Technology

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

Fintech products based on computer programs are protected by copyright in Hong Kong. The Copyright Ordinance recognises computer programs, and preparatory design materials for computer programs, as types of literary works which can be protected by copyright. Copyright in the source code arises automatically, and registration is not needed or possible.

A database will be protected as a literary work if it falls under the general copyright law in Hong Kong. There are no separate database protection rights in Hong Kong.

In terms of patents, computer programs and business methods "as such" cannot be patented. However, patent protection may be available for software-related inventions that produce a further technical effect. Given the potential difficulties, the common law of confidence may be useful in preventing the disclosure of technical information which are trade secrets.

It is possible to register a trade mark in Hong Kong, which will protect the branding applied to a fintech product.

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

No registration of copyright is required or possible in Hong Kong. The general rule is the author is the first owner of copyright. In the case of a computer-generated work, the author will be the person who undertakes the arrangements necessary for the creation of the work.

However, first copyright to works: (i) made by an employee in the course of his employment will belong to the employer (unless a contrary agreement has been made); and (ii) which have been commissioned will belong to the commissioner provided there is an express agreement with the contractor to this effect. The legislation provides: (i) in the case of work produced in the course of employment, further reward for an employee if the use of the work is beyond the parties' reasonable contemplation at the time it was created (the parties can contract out of this); and (ii) in the case of commissioned work, that even where the contractor is the party entitled to the copyright under the agreement, the commissioner will still have an exclusive licence to exploit the work for purposes reasonably contemplated at the time of commissioning it, as well as the power to stop it from being used for purposes against which the commissioner could reasonably object.

The general rule is that the right to a patent belongs to the inventor. The exception is where the inventor is an employee – in which case, ownership will belong to the employer if certain conditions are met. However, compensation may be awarded to the employee where the invention is of outstanding benefit to the employer (parties cannot contract out of this).

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

For copyright, Hong Kong has an "open qualification" system whereby works can qualify for protection irrespective of the nationality or residence of the author and where the work was first published. This extends the reciprocal protection under various international copyright conventions applicable to Hong Kong (which include the Berne Convention and WIPO (Copyright) Treaty).

Patent registration in the PRC or overseas will not give automatic protection in Hong Kong (and *vice versa*). However, a UK, EU (designating UK) or PRC patent forms the basis of a standard patent application in Hong Kong. Patent protection for Hong Kong via the international patent system under the Patent Cooperation Treaty can be obtained on the basis of an international application designating the PRC, followed by a further application in Hong Kong after the international application has entered its national phase in the PRC. A short-term patent in Hong Kong is possible in the absence of such designated overseas patents. There is no substantive examination of any patent applications in Hong Kong.

Trade mark protection will require national registration. The international registration of marks under the Madrid Protocol does not currently apply to Hong Kong, but the Government has indicated it may adopt the protocol in 2019 (at the earliest).

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

IP is usually exploited by means of assignment, licensing or the granting of security interests.

Depending on the type of IP right, the formalities for assignments and licences are different. Generally, an assignment must be in writing and signed by the assignor. An exclusive copyright licence should be in writing and signed by or on behalf of the copyright owner. There is no formal written requirement for non-exclusive copyright licences. Patent licences do not need to be in writing but it is encouraged for registration (see below). Trade mark licences must be in writing and signed.

It is important to register transactions (assignments, licences and security interests) concerning registered rights (such as patents and trade marks) on the relevant IP register in order to maintain priority as against third-party interests registered in the interim. Failure to register a patent assignment or exclusive licence, or trade mark assignment or licence, within six months will result in the assignee/licensee being unable to claim damages for any infringement relating to the period before their registration.

In addition to any registration at the relevant IP registry, certain security interests over unregistered or registered rights (copyrights, patents or trade marks) granted by Hong Kong companies should be registered at the Companies Registry within a month in order to protect against creditors.

Acknowledgment

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Slaughter and May has a long-standing presence in Asia. Our office in Hong Kong was opened in 1974 and we have extensive experience of a wide range of work throughout Asia.

In particular, we are familiar with the challenges facing clients in the fintech sector, having been involved in various transactions for financial institutions, global technology companies, trading platforms, investors and start-ups. Our experience includes advising: Zhong An Online P&C Insurance (China's first internet insurance company which was co-founded by Alibaba Group Holdings, Tencent Holdings and Ping An Insurance) in its first round of fundraising – one of the biggest fundraisings by a Chinese fintech company in 2015; and Alibaba Group on (amongst others) its investment in, and O2O joint venture with, Intime Retail (Group) Limited and its acquisition of SCMP Group Limited.

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