

FINTECH REGULATION IN CHINA

This is the first book-length treatment of the regulation of financial technology (Fintech) in China. Fintech brings about paradigm changes to the traditional financial system, presenting both challenges and opportunities. At the international level, there has been a fierce competition for the coveted title of global Fintech hub. One of the key enablers of success in this race is regulation. As the world's leader in Fintech, China's regulatory experience is of both academic and practical significance. This book presents a systematic and contextualized account of China's Fintech regulation and, in doing so, identifies and analyzes relevant institutional factors contributing to the development of the Chinese law. It also takes a comparative approach to critically evaluating the Chinese experience. The book illustrates why and how China's Fintech regulation has been developed, if and how it differs from the rest of the world, and what can be learned from the Chinese experience.

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FINTECH REGULATION IN CHINA

Principles, Policies and Practices

ROBIN HUI HUANG
The Chinese University of Hong Kong



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To my wife, son and daughter

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[More Information](#)

CONTENTS

<i>List of Figures and Tables</i>	page	viii
<i>Foreword by Laurence Li SC</i>		ix
<i>Preface</i>	xi	
<i>Acknowledgements</i>	xiii	
<i>List of Abbreviations</i>	xiv	
1 Introduction	1	
2 Online P2P Lending	14	
3 Initial Coin Offerings	52	
4 Cryptoassets	97	
5 Mobile Payment	137	
6 Data Privacy in Mobile Payment	178	
7 Robo-Advisors	222	
8 Equity Crowdfunding and Central Bank Digital Currency	257	
9 Conclusion	286	
<i>Index</i>	291	

FIGURES AND TABLES

- Figure 3.1 ICO life cycle process *page 55*
Table 2.1 Geographical distribution of online P2P platforms 21
Table 7.1 A comparison of robo-advisory services between China and the United States 227

FOREWORD BY LAURENCE LI SC

This is a timely book. Professor Huang provides an expert analysis of the Fintech scene in China. It is possibly the most comprehensive review of the topic to date. Practitioners and policymakers will find this book informative and useful reading.

Fintech is the single fastest and largest growth theme in finance and financial services today. And China is leading the world in Fintech development as well as application.

Part of the reason may be the relative ‘green field’ nature of financial services in China. I once heard a story by a US banker: some years ago, a Chinese official visited the United States and was shown a computerized cheque-reading system. He was dazzled by both the idea that a small piece of paper could in effect represent money and that a machine can clear and execute thousands of instructed transfers per minute.

The same Chinese official later saw the US banker again. This time, he took out his smartphone. China skipped over the whole cheque system – saved expensive investments, avoided dated methodologies, and leaped to a way of operating things which runs faster and unlocks more potential.

This book is timely not only because of the positives which Fintech has brought. It is timely also because new things can unlock benefits and risks in equal measure.

I remember when, as a student, I could not get a credit card, and the only credit available to youngsters was student loans. Banks offered debit cards, which could be used at the front end like credit cards. But you must have the money before you can spend it. In retrospect, that was a very effective way of curtailing credit and instilling discipline.

Now, an app can make an assessment of anyone’s credit risk and lend, and does so instantly. This is surely smart credit; it’s also wide credit. It changes individual behaviour; it changes social capacity; it changes systemic risk level and profile.

P2P lending, crowdfunding, ICOs, crypto assets, robo-advice, mobile payment . . . these are many of the new possibilities which Fintech has

brought us – and which responsible authorities the world over need to find ways to monitor and regulate with as little stifling as possible.

This book is ambitious in discussing these Fintech possibilities as well as certain attempts at monitoring and regulating them. There are no perfect or universal solutions. That makes this book all the more useful. Its analysis will be of interest to readers on both sides of the aisle.

Regulation must adapt to the market. Fortunately, Fintech itself may offer a large part of the solution. Regtech can help to keep Fintech on its straight and narrow path. Authorities must master the same powerful tools which tech firms and financial service practitioners are deploying. Perhaps that can be the topic of Professor Huang's next book.

I warmly congratulate Professor Huang on this book.

Laurence Li SC
Chairman

Hong Kong Financial Services Development Council
7 December 2020

PREFACE

Financial technology (Fintech) brings about paradigmatic or revolutionary changes to the traditional financial system, presenting both challenges and opportunities. In 2020, when this book was largely written, unlike many traditional businesses, Fintech seemed to be accelerated rather than hampered by the outbreak of the COVID-19 pandemic. Due to the various restrictions and even lockdowns imposed during the pandemic, more people and institutions have embraced Fintech, doing shopping, payment and investment through online platforms. In any event, Fintech looks set to reshape the financial landscape, producing significant impacts on the business community and society at large.

At the international level, therefore, major advancements in Fintech in the past decade have created fierce competition between nations to be the next regional or global Fintech hub. One of the main enablers of success in the development of a robust Fintech market is regulation. Indeed, Fintech has both benefits and risks. Regulation is key to ensuring that we fully enjoy the benefits of Fintech while adequately managing its risks, as well as setting the right direction of development for Fintech in the future.

As the world's leader in Fintech, China's experience is of both academic and practical significance. In fact, China has both stories of success and lessons of failure. The Chinese experience can have important implications for the international discourse and debate on the regulation of Fintech. Fintech is an evolving concept with new products or services emerging constantly. Hence, it seems neither desirable nor feasible to discuss all Fintech sectors in this book, and it would be necessary to be selective about the topics to be covered. I thus choose to focus on the following topics: online P2P lending, cryptoassets, initial coin offerings, mobile payments, data protection, robo-advisory, equity crowdfunding and central bank digital currency.

To the best of my knowledge, this is the first English-language book-length treatment of the development and regulation of Fintech in China.

It has several features which I hope will benefit readers. The first is that it presents a systematic and contextualized account of China's Fintech regulation, so that readers can have a holistic view of the regulatory approach and regulatory perimeter in China. Second, it tries to identify and analyze factors the interaction of which has contributed to the constitution of the institutional environment in which China's regulation of Fintech has been made and enforced. This will help readers understand not only what the law is but also why the law is the way that it is. Third, it takes a comparative approach to critically evaluating the Fintech regulation in China. The comparative analysis covers some major Fintech jurisdictions in the region and internationally, such as in the United States, the United Kingdom, Singapore and Hong Kong. Hence, readers can broaden their horizons and gain a deeper understanding of the strengths and weaknesses of the Chinese experience.

Fintech regulation is a cutting-edge and largely uncharted territory, and the right key can be found only after lots of trial and error. I would appreciate all comments which may help me improve the book in a future edition.

ACKNOWLEDGEMENTS

This book is a product of the research that I have conducted under a project (no. 14613219) funded by the Hong Kong Research Grants Council's General Research Fund, titled 'The Regulation of Fintech in China'. Portions of this book spring from articles that I have published previously, and I am grateful for the use permissions granted by the relevant journals (for Chapters 2–4, *European Business Organization Law Review* and *Banking & Finance Law Review*; for Chapters 5–6, *Washington University Global Studies Law Review* and *Chicago-Kent Journal of Intellectual Property*).

I thank my editors at Cambridge University Press for editing the manuscript intelligently and efficiently and in the process making it better. I would like to acknowledge the anonymous reviewers who provided extensive comments on my proposal for this book, which proved invaluable in outlining and writing the text.

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Furthermore, I am indebted to Mr Laurence Li SC, Chairman of Hong Kong Financial Services Development Council; Professor Howell E. Jackson of Harvard Law School; Professor Michael Klausner of Stanford Law School; Professor Omri Ben Shoham of Chicago Law School; Professor Luca Enriques of Oxford Law School; and Professor Simon Deakin of Cambridge Law School for taking the time to review the book and offer very kind and encouraging words in the foreword and endorsements.

Last, but not least, I thank my family members, who have been generous with their support during the development of this project. I dedicate this book to my wife, son and daughter.

ABBREVIATIONS

AI	artificial intelligence
AML	anti-money laundering
AMLD	Anti-Money Laundering Directive
AMLO	Anti-Money Laundering and Counter Terrorist Financing (Financial Institutions) Ordinance Chapter 615
ASIC	Australian Securities and Investment Commission
ATS	automated trading service
AUD	Australian dollar
BIS	Bank for International Settlements
CBIRC	China Banking and Insurance Regulatory Commission
CBRC	China Banking Regulatory Commission
CFPB	Consumer Financial Protection Bureau
CFT	combating the financing of terrorism
CFTC	Commodity Futures Trading Commission
CII	critical information infrastructure
CIRC	China Insurance Regulatory Commission
CIS	collective investment scheme
CPC	Communist Party of China
CSA	Canadian Securities Administrators
CSRC	China Securities Regulatory Commission
C(WUMP)O	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32)
DC/EP	Digital Currency Electronic Payment project
DLT	distributed ledger technology
DNCR	Do Not Call Registry
EC	equity crowdfunding
EFTA	Electronic Funds Transaction Act
EMI	Electronic Money Intuition
EMR	Electronic Money Regulations 2011
ESMA	European Securities and Markets Authority
EU	European Union
FATF	Financial Action Task Force
FCA	UK Financial Conduct Authority

LIST OF ABBREVIATIONS

XV

FDIC	Federal Deposit Insurance Corporation
FinCEN	Financial Crimes Enforcement Network
FIPs	Fair Information Practices
FSB	Financial Stability Board
FSS	Fintech Supervisory Sandbox
FTC	Federal Trade Commission
G7	Group of Seven
GAV	Global Accelerated Ventures
GBP	British pound sterling
GDP	gross domestic product
GDPR	General Data Protection Regulation
GP	general partner
GPS	Global Positioning System
HKMA	Hong Kong Monetary Authority
ICO	initial coin offerings
IMF	International Monetary Fund
INPEF	Internet non-public equity financing
IOSCO	International Organization of Securities Commissions
IP	Internet protocol
IPO	initial public offerings
IRS	Internal Revenue Service
JMLSG	Joint Money Laundering Steering Group
KYC	know-your-client
LHoFT	Luxembourg House of Financial Technology
LP	limited partner
MAS	Monetary Authority of Singapore
MiFID	Markets in Financial Instruments Directive
MIIT	Ministry of Industry and Information Technology
MLO	Money Lenders Ordinance Chapter 163
MMS	multimedia message service
NFC	near-field communications
NIFAC	National Internet Finance Association of China
NPCSC	Standing Committee of the National People's Congress
OECD	Organisation for Economic Co-operation and Development
P2P	peer-to-peer
PBOC	People's Bank of China
PD	Prospectus Directive
PDPA	Personal Data Protection Act
PDPO	Personal Data (Privacy) Ordinance
PSA	Payment Services Act 2019
PSD2	Payment Service Directive 2
PSR	Payment Systems Regulator

PSR 2017	Payment Services Regulations 2017
QR code	quick response code
RGFS	risk guaranty fund scheme
RMB	Chinese renminbi
SAC	Securities Association of China
SAFE	State Administration of Foreign Exchange
SDF	Stellar Development Foundation
SEC	Securities and Exchange Commission
SFC	Hong Kong Securities and Futures Commission
SFO	Securities and Futures Ordinance (Chapter 571)
SGQR	Singapore quick response code
SME	small and medium-sized enterprises
S-PSA	Singaporean Payment Services Act
SOE	state-owned enterprises
SVF	stored value facility
SVF Ordinance	Payment Systems and Stored Value Facilities Ordinance
TLA	Federal Truth in Lending Act
UK	United Kingdom
UMSA	Uniform Money Service Act
US	United States
VATP	virtual asset trading platform
WAP	wireless application protocol