

Client Alert

February 2016

FinTech and the Legal Landscape

What is FinTech?

The term "FinTech" has recently seen a drastic increase in media coverage in both the global and local news. As generally understood, it refers to businesses that use technology and innovative business models in providing financial services. The new technologies and innovations are radically reshaping the way financial services are structured, provided, and consumed.

New FinTech products and services are being made available every day in all financial service sectors. In our experience, such areas include, among many others:

- payment products (e.g., mobile money/e-wallet, mobile/internet payments, crypto currencies);
- lending (e.g., P2P lending, merchant finance, online receivables finance);
- capital raising (e.g., crowdfunding);
- investment management (e.g., robo-advisors); and
- innovative money remittance and foreign exchange business.

These products and services are being offered by banks and non-banks, industry leaders, and innovators. In short, they are being offered by anyone who sees the opportunities in the application of innovation to the financial sector.

The legal and regulatory landscape for FinTech

Since the potential for creativity in the application of innovations for FinTech products is limitless, the offering of FinTech products can also involve numerous laws and regulations.

Financial services are a very heavily regulated sector. When offering FinTech products and services to the Thai market, the key questions that need to be answered are whether the business operator will be able to operate legally in Thailand and whether a license, registration or approval is required, such as a banking license, e-payment license, securities license, personal loan license, credit card business license, FX license, money transfer license, crowdfunding portal approval, etc.

There are also several regulatory requirements that the business operators may need to comply with, including anti-money laundering law, risk management, business contingency plan, IT system security, data protection, consumer protection, etc., as the case may be. If the FinTech products and services relate to cross-border payments or settlements, the exchange control law will also play a vital role in determining whether offering the product or service in Thailand will be feasible in the current legal environment.

www.bakermckenzie.com

Bangkok

5th Floor and 21st-25th Floors
990 Abdulrahim Place
Rama IV Road, Silom, Bangkok
Bangkok 10500
Thailand

For further information,
please contact:

Komkrit Kietduriyakul
+66 2636 2000 ext. 3024
Komkrit.Kietduriyakul@bakermckenzie.com

Kullarat Phongsathaporn
+66 2636 2000 ext. 3105
Kullarat.Phongsathaporn@bakermckenzie.com

The future of the FinTech laws and regulations

The legal challenges in the FinTech realm are that many new products and services do not fit perfectly into the currently available regulatory schemes. The relevant regulators have been developing several new laws and regulations in this area. To give you some flavor of regulatory responses, we provide several examples below.

- **Crowdfunding:** The Securities and Exchange Commission ("**SEC**") has published a notification in relation to equity-based crowdfunding, effective 16 May 2015 which allows a qualified company to raise funds from the public by offering shares through an electronic platform provided by a funding portal approved by the SEC, subject to several requirements and restrictions.
- **Payment system law:** The draft new payment system law, intended to reform and unify the laws in relation to payment systems in Thailand, has been approved in principle by the Cabinet on 1 December 2015. According to the summary of the draft law as proposed to the Cabinet, this draft law involves the key payment systems important to the security of the financial system (and the payment finality concept) as well as the payment system under supervision and the payment services under supervision (where new requirements may be introduced, e.g., protection of float money in case of the business operator's insolvency).
- **National e-Payment Master Plan:** The Cabinet approved the Master Plan in principle on 22 December 2015 showing the recognition and intention to drive the transformation of Thailand's payment system to full electronic payment infrastructure both in the government and private sectors. It is hoped that the Master Plan will bring about payment infrastructure development (e.g., Any ID payment system), e-Tax System, e-payment system for social welfare, financial inclusion, and cashless society, the environment in which FinTech businesses will likely thrive.
- It is also expected that there will be continued developments in other laws and regulations relevant to the operation of FinTech businesses such as anti-money laundering law, exchange control law, and data protection law.

The development of the technologies and innovations will continue to shape customer behaviors, business models, and the structure of the financial services industry. The application of financial regulations usually depends on an assessment of the factual circumstances of the case at hand. It is advisable for FinTech businesses to make a thorough and timely assessment of their regulatory position and legal risks to ensure legal compliance and sustainable business success in Thailand.

We will continue to keep you informed of other important developments related to FinTech as and when they arise.