COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

Singapore

FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Singapore.

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SINGAPORE
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1. What are the sources of payments law in your jurisdiction?

In Singapore most, if not all, of the financial products and services provided by banks / organisations that involve public interest are regulated. There are different legislation enacted for the different types of services / products offered. In this regard, some of the more notable legislation are as follows: Payment Services Act 2019, which provides for the licensing and regulation of payment service providers and payment services in Singapore. Securities and Futures Act, which regulates the activities and institutions in the securities and derivatives industry, including leveraged foreign exchange trading, of financial benchmarks and of clearing facilities. Moneylenders Act, which regulates moneylending, the designation and control of a credit bureau, and the collection, use and disclosure of borrower information and data. Commodity Trading Act, which regulates certain types of commodity trading. Insurance Act, which regulates the insurance business in Singapore, insurers, insurance intermediaries and related institutions.

2. Can payment services be provided by non-banks, and if so on what conditions?

Yes, certain non-bank licensed entities may provide payment services. Under the Payment Services Act 2019 ("PS Act") that came into force in January 2020, license holders may provide one or more of the following payment services (descriptions from the website of the Monetary Authority of Singapore or MAS): Account issuance service – The service of issuing a payment account or any service relating to any operation required for operating a payment account, such as an ewallet (including certain multi-purpose stored value cards) or a non-bank issued credit card. Domestic money transfer service – Providing local funds transfer service in Singapore. This includes payment gateway services and payment kiosk services. Cross-border money transfer service – Providing inbound or outbound remittance service in Singapore. Merchant acquisition service – Providing merchant acquisition service in Singapore where the service provider processes payment transactions from the merchant and processes payment receipts on behalf of the merchant. Usually the service includes providing a point-of-sale terminal or online payment gateway. E–money issuance service – Issuing e-money to allow the user to pay merchants or transfer to another individual. Digital payment token service – Buying or selling digital payment tokens ("DPTs") (commonly known as cryptocurrencies), or providing a platform to allow persons to exchange DPTs. Money-changing service – Buying or selling foreign currency notes.

3. What are the most popular payment methods and payment instruments in your jurisdiction?

Singapore is a major e-commerce market in the region, despite its small geographical footprint and population. This market is expanding due to the country's excellent internet technology and high mobile penetration level among its citizens. There is also a sizeable segment of the young and internet-savvy, a growing middle class and the fact that Singapore is among the world's top ten countries of highest GDP per capita globally with relatively high disposable income. Mobile commerce is well-established in Singapore and is nearly half of all online sales. Credit card transactions were the most popular method for e-commerce payments in Singapore in 2020, accounting for 45 percent of total e-commerce payments (according to Statista). Now, in the second year of the Covid-19 pandemic, cashless mobile payments continue to gain in popularity since the quantum jump in adoption in 2020. Generally, there are four types of such solutions in Singapore: First, Mobile Payment via Connected Bank Account – the consumer makes payment directly from their bank account, enabled by the digital registration of their bank cards to the mobile phone. Second, Mobile Payment via Linked Credit/Debit Card –the consumer, having downloaded an app such as ApplePay, now has their mobile phone serves as their card. Third, Mobile Payment via Mobile

Wallet – payment via mobile wallet is possible with a connected bank account (or other digital payment methods) and the consumer tops up their wallet before paying. Fourth, Mobile Payment via Application Payment Service – applications such as Alipay that have launched their own payment platforms facilitate cashless payments, and further entice their consumers with additional perks with partner merchants.

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

Singapore has been an early adopter and leader of open banking and APIs in the region. This development has been facilitated by the MAS (the region's major regulator) and other government agencies in Singapore. The MAS has, inter alia, come up with open banking/APIs guidelines, and developed a framework (together with the Association of Banks of Singapore). The MAS also operates the Financial Industry API Register (which tracks APIs by functional category as they are launched). On 7 December 2020, MAS launched the Singapore Financial Data Exchange (SGFinDex), which involves the consolidation of financial data from banks and government agencies in a single place, instead of multiple locations. This is a leap forward in Singapore's open banking space.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

The collection, use and transmission of personal data is regulated in Singapore. This is mainly governed by the Personal Data Protection Act 2012 ("PDPA") whose main purpose is to "govern the collection, use and disclosure of personal data by organisations in a manner that recognises both the right of individuals to protect their personal data and the need of organisations to collect, use or disclose personal data for purposes that a reasonable person would consider appropriate in the circumstance". (Section 3 of the PDPA.) In this regard, the Personal Data Protection Commission ("PDPC") was established on 2 January 2013 to administer and enforce the PDPA. Many fintech business use cases require the regular collection of large amounts of data, with sophisticated analytics being used to provide the best customer experience as well as prudential controls. There are also fintechs that are innovating in the area of financial institutions' "Know Your Client" (KYC) processes. Moreover, before fintech businesses can onboard clients, they would have to comply with and complete the requisite KYC processes as required by the MAS. This would typically involve the collection of the prospective client's personal data. The Singapore government designed a digital identity system for Singapore residents and businesses (including fintechs) to transact digitally with the government and private sector in a convenient and secure manner. This system, called National Digital Identity (NDI), was made operational in 2020.

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

MAS has been receptive to fintech innovation and technology-driven new entrants to regulated financial services market. Singapore has regulatory sandboxes that allow fintechs to launch products to a limited number of customers without clearing onerous licensing rules. Ravi Menon, managing director of the Monetary Authority of Singapore, has been quoted as saying that the purpose of sandboxes is to "allow experiments even where it is not possible at the outset to anticipate every risk and meet every regulatory requirement". A Business Times article on 24 June 2021 estimates there are 1,400 fintech firms in Singapore. Singapore's regulatory framework has also been enhanced to support fintech innovation, with the new Payment Services Act 2019 being a legislative response to the proliferation of fintechs in recent years.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

The Singapore government has expressed its determination to streamline regulations to spur Fintech innovation. The Covid-19 pandemic has also measurably accelerated the adoption of digital payment and financial services. A key risk to the growth of the fintech market is the decline in investment activity due to the deteriorating world economy. A Business Times article dated 24 June 2021 reported that Singapore fell one rung to fourth place in this year's Global Fintech Rankings, produced by findexable in partnership with Mambu.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

The Inland Revenue Authority of Singapore or IRAS provides a special tax exemption to startups for the first three assessment years, so as to promote entrepreneurship and help startups grow and establish a viable presence in the country. Three conditions must be fulfilled to qualify for the tax exemption, namely: The company must be registered in Singapore; The company must be a tax resident in Singapore for that assessment year; The number of shareholders of the company must not exceed 20 in that assessment year. The eligible startup will be exempted from any tax on the first S$100,000 of the normal chargeable income, and additionally, exempted up to 50% of tax on the next $200,000 normal chargeable income. This exemption is applicable for its first three consecutive years.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

A Business Times article dated 20 May 2021 reported that Singapore fintechs raised about S$656 million in the first quarter of 2021, up 355 per cent from the year before. This continues the upward trajectory since 2016. Last year, Singapore became the first country in South-east Asia to issue digital banking licences, and it is expected that this sector will attract investments as the new licensees establish themselves. Apart from the Singapore government providing direct funding through different schemes, there are many angel investing networks, venture capital firms, private equity firms, startup incubators and accelerator programmes that can assist new fintech businesses in raising capital.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

Singapore is actively moving towards being a smart nation and the fintech sector is one of the fastest growing sectors in the country. Other than a supportive government and well-trained work force, Singapore also has good governance, a fintech friendly regulatory framework as well as access to investment capital. Even in the face of global recession due to Covid-19, the Singapore government continues to make grants available for fintech innovation.

11. Access to talent is often cited as a key issue for fintechs – are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

All foreigners intending to work in Singapore must have a valid pass (also known as work visa) before they can commence work. The pass required will depend on the type of work the employee is engaged for. The three broad categories for foreigners intending to work in Singapore are Professionals, Skilled and Semi-skilled workers, as well as Trainees and Students. Under each of these categories, there are also different types of work passes. Employers should carefully consider the scope and terms of employment of the foreigner before applying for the relevant work passes. For foreign entrepreneurs wanting to start and operate a new business in Singapore, the applicable pass to apply for would likely be the EntrePass. Some of the rules around the hiring of foreign talent are as follows: Companies with 10 or more full-time employees who are looking to hire foreign employees on Employment Passes for positions where the fixed monthly salary is below S$15,000 must advertise the positions at the National Jobs Bank Portal for at least 14 days. Companies will have to pay semi-skilled foreigners a minimum salary of S$2,400.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

There are no Singapore rules on the hiring of foreigners that are particular to fintech businesses. Singapore's employment rules with regard to foreigners aim to strike a balance between being open to talent (especially in certain sectors of the economy) while ensuring Singaporeans have access to good jobs. In January 2021 the government launced Tech.Pass, a new work pass programme (with only 500 places) to woo top-tier foreign professionals and experts looking to start businesses, lead corporate teams or teach in Singapore.

13. What protections can a fintech use in your jurisdiction to protect its intellectual

property?

Innovations and inventions that are man-made are classified as intellectual property ("IP"). There are three mechanisms the exclusive rights to IP can be registered in Singapore- a patent, a copyright or a trademark. Other than common law principles (such as the law on confidential information) that would apply, there is legislation that operates to govern these mechanisms for the registering of an IP right. Some of the more notable legislations include:- the Copyright Act, Registered Designs Act, Patents Act, and the Trade Marks Act. Infringements of these rights can result in common law remedies such as damages and injunctions, and criminal penalties such as fines and imprisonment. The Intellectual Property Office of Singapore ("IPOS") Act was enacted to establish the IPOS as a statutory board under the Ministry of Law, responsible for advising and administering IP laws. IPOS also plays a significant role in supporting the growth of fintech innovations in Singapore. Patents – A person who wants to apply for a patent in Singapore can file for one with the Registry of Patents either in person or online. The Registry of Patents in part of IPOS. If the person wants to apply for a patent in multiple jurisdictions, is able to do so under the Patent Cooperation Treaty (administered by the World Intellectual Property Organisation ("WIPO")) using the Singapore's Registry of Patents as the receiving office. Copyright – There is no official registration of copyrights before the right exists. A copyright will arise immediately upon creation and the right will arise in a work or subject matter in Singapore in the following scenarios:- (1) if the work or subject matter was first published or made in Singapore or in a member country of the Berne Convention or the World Trade Organisation; or (2) the creator of the work or subject matter was a citizen or resident of Singapore or of a member country of the Berne Convention or the World Trade Organisation at the time when the work was first creation. Trademarks – Trademarks can be registered through IPOS either online or in person. In this regard, a person can choose to register the trademark only in Singapore or internationally through the Madrid Protocol (WIPO's international registration system of trademarks). Registration of the trademark will be effective on the day it is filed. Moreover, under the Trademark Act in Singapore, there is statutory protection for foreign businesses that are well known in Singapore (such as Apple or Nike) whereby these businesses can avail themselves to the rights and remedies provided under the act even without registering their trademarks.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

There are Singapore regulations that are applicable to cryptocurrencies/ cryptoassets. If the cryptocurrency/cryptoasset has the attributes of a commodity, the Commodity Trading Act is the relevant legislation. This act regulates business activities involving, among others, "spot commodity trading" which is defined under the act as "…the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity". The regulatory body overseeing the Commodity Trading Act is Enterprise Singapore. If the cryptocurrency/cryptoasset has the attributes of a digital payment token, the relevant legislation is the Payment Services Act 2019, which governs the licensing and regulation of payment service providers and payment systems in Singapore. A digital payment token refers to a digital representation of value that is expressed as a unit, is not denominated in any currency and is not pegged by the issuer to any currency, is intended to be used as a medium of exchange, and can be transferred, stored or traded electronically. The regulatory body overseeing the Payment Services Act is the MAS. If the cryptocurrency/cryptoasset has the attributes of a capital market product, the relevant legislation is the Securities and Futures Act. Capital market products include securities, units in a collective investment scheme, derivatives contracts, and spot foreign exchange for the purpose of leveraged foreign exchange trading. The regulatory body overseeing the Securities and Futures Act is the MAS. The MAS is presently in a consultation phase of a new Omnibus Act intended to provide regulatory clarity about cryptoassets other than digital payment tokens. So far, two companies dealing in digital payment tokens have successfully obtained a license under the Payment Serices Act, with more than 100 applicants still being reviewed.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

The Monetary Authority of Singapore has issued guidance on several occasions on how the regulators perceive ICOs in Singapore. ICOs are not banned; however the MAS requires ICO issuers to obtain independent legal advice to ascertain if the digital coins or tokens, are in fact securities or collective investment schemes. If the coins or tokens are in fact securities or collective investment schemes, they will be subject to the body of securities regulations (Securities and Futures Act) including prospectus requirements, unless certain specific regulatory exemptions (e.g. small offer exemptions, private placements, or offers to accredited/institutional investors) apply. Additionally, a platform that functions as an intermediary in dealing with coins or tokens that are securities is required to obtain a capital markets services license for dealing in securities or fund management or as a financial adviser under the Financial Advisers Act. The legal status of ICOs can be analysed based on their underlying products or services: Securities – For instance, a share or debt instrument. Services – Where the underlying is a service provided by the issuer (or a related party of the issuer). The types of services involved are potentially limitless (e.g., tokens for blockchain application, advertising space, rights to energy rights, tokens for rights to access to office space or information). However, almost all allow for the owner of the token or coin to use the services at no further charge, or at great discount. Contractual Obligations – These include contractual contingencies (e.g., a convertible), revenue sharing arrangements, and profit sharing arrangements. Hybrids – These represent some combination of security, services, or contractual obligations. Many ICOs are structured so that they provide both service and investment features, thus blurring the legal status. It is only in taking a critical look at the rights and obligations created in the offering that one can determine if the solicitation is for a service or a security. Where the coins/tokens issued grant participants rights mimic forms of debt or equity, these are likely to be deemed securities. Coins/tokens that confer upon participants rights such as services, non-monetary rewards, physical assets are further away from the securities line, but could be at risk of being deemed a security due to the investment nature of the instrument. The MAS is also concerned about ICOs being used as money laundering or terrorism financing platforms. In this respect, ICO issuers are subject to the generic Corruption, Drug Trafficking and Other Serious Offences (Confiscation of Benefits) Act, and the Terrorism (Suppression of Financing) Act.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

The government-led Project Ubin is a flagship, collaborative project between Singapore’s central bank and the international financial industry to test the use of blockchain and distributed ledger technology for clearing and settlement of payments and securities. It was launched in 2016 and recently completed the last of the five phases, its testing involving more than 40 firms. The commercial applications of the payments network prototype include cross-border payments in multiple currencies, foreign currency exchange, settlement of foreign currency-denominated securities, as well as integration with other blockchain-based platforms to enable end-to-end digitalisation across many industries and use cases. On 8 December 2020, the MAS revealed its Project Ubin digital currency experiments have borne fruit with the commercialization of a cross-border payments network in partnership with DBS Bank, JP Morgan and Temasek. A Business Times article dated 2 September 2021 reported that Monetary Authority of Singapore (MAS) has moved on to a new project (Project Dubar), joining forces with the Bank for International Settlements (BIS) Innovation Hub, the Reserve Bank of Australia, Bank Negara Malaysia, and the South African Reserve Bank to test the use of central bank digital currencies (CBDCs) for international settlements.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

The MAS has proactively taken steps to develop and strengthen the AI ecosystem in Singapore’s financial sector, comprising financial institutions (FIs), research institutions, and AI solution providers. Some of the primary use cases for AI and data analytics in the sector are customer marketing, risk scoring, and fraud detection. MAS wishes to see financial institutions and FinTechs increase the experimentation and use of AI and data analytics to improve their services, and Singapore government agencies are likewise committed to ensure that their support, policies and regulations are attuned to developments and remain supportive of these new technologies. In 2017, the MAS launched a S$27 million Artificial Intelligence and Data Analytics (AIDA) Grant to help fintechs develop AI products for finance. To date 23 projects have been funded by AIDA and MAS has published 5 requests-for-proposals on topics such as Quantum Computing and Explainable AI. MAS also recently announced that it will substantially enhance the AIDA grant scheme. In 2018, MAS released a set of principles to promote fairness, ethics, accountability and transparency (FEAT) in the use of AI and data analytics in finance. The document does not have the force of law, and provides guidance to firms offering financial products and services on the responsible use of AI and data analytics, so as to strengthen internal governance around data management and use. This is intended to foster greater confidence and trust in the use of AI and data analytics, as firms increasingly adopt technology tools and solutions to support business strategies and in risk management. In November 2019, the MAS and industry partners announced a collaborative project called Veritas—a framework to enable financial institutions to evaluate their AIDA-driven solutions against the FEAT principles to strengthen internal governance around the application of AI and the management and use of data. On 6 January 2021, the MAS announced the successful conclusion of the first phase of the Veritas initiative which saw the development of the fairness assessment methodology in credit risk scoring and customer marketing.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

The Singapore insurance industry is heavily regulated. Its insurtech scene could be described as opening up, yet saturated and competitive. Experts observe that while fintech has significantly changed financial services in general, the traction for insurtech has been comparatively slow. There is a popular conception that the insurance industry is slow to be disrupted and is still using outdated technologies. Some of the active insurtechs employ big data, actuarial risk management and machine-learning processes to create products that are integrated into online marketplaces and platforms.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

Singapore, which held the 5th rank in the 2021 Global Financial Centres Index (GFCI) ranking of global financial centres, also ranked 7th in its fintech survey the same year, scoring "consistently high across all categories". Payments solutions providers make up more than half of the fintech members of the Singapore Fintech Association. This is the reason why the government implemented the Payment Services Act 2019, a forward looking and flexible framework for the regulation of payment systems and payment service providers. The Act also consolidated and updated various payments related legislation in this evolving space, and among other policy objectives, aims to strengthen consumer protection and promote confidence in the use of epayments.

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

Singapore has envisioned itself as a Smart Financial Centre—where innovation is pervasive and technology is used widely to increase efficiency; create new opportunities; manage risks better; and improve people's lives. To that end, the government has highly encouraged and incentivized fintechs and incumbent financial institutions to collaborate. MAS committed S$225 million under the Financial Sector Technology & Innovation (FSTI) Scheme to attract financial institutions to set up their innovation labs in Singapore; catalyse innovative solutions by financial institutions or fintechs; and fund industry-wide infrastructure for inter-operability and seamless services. In December 2020, the MAS issued two digital full bank licenses and two digital wholesale bank licenses in a bid to spur innovation by opening up the market to new players. This decisively disrupts the fortunes of incumbent financial institutions.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

In August 2020, the MAS announced that Singapore now hosts 40 innovation labs set up by global banks and insurers, compared to hardly any only five years ago. These labs have embarked on nearly 500 innovation projects, including a major bank's AI chatbot that reviews resumes, collects applicants' responses to prescreening questions, and conducts psychometric profiling of candidates; as well as a private bank's digital advisory platform that provides recommendations to wealth management clients customised to their portfolio preferences. Many of these innovation labs were at least partly funded by the Singapore government, and a beneficial side effect is that they created nearly 200 high value jobs.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

Ravi Menon, Managing Director of MAS, gave a speech "FinTech for an Inclusive Society and a Sustainable Planet" at the Singapore FinTech Festival 2020, casting a vision of what fintech can do for an inclusive society in Singapore – this involves empowering every citizen and enterprise in the country to become digitally enabled and financially included. Against this backdrop, the most recent major development in this area is the awarding of four digital banking licenses to various fintech consortia in December 2020. These new digital banks are expected to commence business in 2022.

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