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CHAMBERS GLOBAL PRACTICE GUIDES

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# Fintech 2023

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comparative analysis from top-ranked lawyers

**Ghana: Law & Practice  
and  
Ghana: Trends & Developments**

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## Law and Practice

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## Contents

<b>1. Fintech Market</b>	<b>p.4</b>	<b>4. Online Lenders</b>	<b>p.17</b>
1.1 Evolution of the Fintech Market	p.4	4.1 Differences in the Business or Regulation of Loans Provided to Different Entities	p.17
<b>2. Fintech Business Models and Regulation in General</b>	<b>p.7</b>	4.2 Underwriting Processes	p.18
2.1 Predominant Business Models	p.7	4.3 Sources of Funds for Loans	p.18
2.2 Regulatory Regime	p.8	4.4 Syndication of Loans	p.18
2.3 Compensation Models	p.10	<b>5. Payment Processors</b>	<b>p.18</b>
2.4 Variations Between the Regulation of Fintech and Legacy Players	p.10	5.1 Payment Processors' Use of Payment Rails	p.18
2.5 Regulatory Sandbox	p.11	5.2 Regulation of Cross-Border Payments and Remittances	p.18
2.6 Jurisdiction of Regulators	p.11	<b>6. Fund Administrators</b>	<b>p.18</b>
2.7 Outsourcing of Regulated Functions	p.12	6.1 Regulation of Fund Administrators	p.18
2.8 Gatekeeper Liability	p.13	6.2 Contractual Terms	p.19
2.9 Significant Enforcement Actions	p.14	<b>7. Marketplaces, Exchanges and Trading Platforms</b>	<b>p.19</b>
2.10 Implications of Additional, Non-financial Services Regulations	p.14	7.1 Permissible Trading Platforms	p.19
2.11 Review of Industry Participants by Parties Other than Regulators	p.15	7.2 Regulation of Different Asset Classes	p.19
2.12 Conjunction of Unregulated and Regulated Products and Services	p.15	7.3 Impact of the Emergence of Cryptocurrency Exchanges	p.19
2.13 Impact of AML Rules	p.16	7.4 Listing Standards	p.20
<b>3. Robo-advisers</b>	<b>p.17</b>	7.5 Order-Handling Rules	p.20
3.1 Requirement for Different Business Models	p.17	7.6 Rise of Peer-to-Peer Trading Platforms	p.20
3.2 Legacy Players' Implementation of Solutions Introduced by Robo-advisers	p.17	7.7 Issues Relating to Best Execution of Customer Trades	p.20
3.3 Issues Relating to Best Execution of Customer Trades	p.17	7.8 Rules of Payment for Order Flow	p.20
		7.9 Market Integrity Principles	p.20

<b>8. High-Frequency and Algorithmic Trading</b>	<b>p.21</b>	12.2 Local Regulators' Approach to Blockchain	p.23
8.1 Creation and Usage Regulations	p.21	12.3 Classification of Blockchain Assets	p.23
8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity	p.21	12.4 Regulation of "Issuers" of Blockchain Assets	p.23
8.3 Regulatory Distinction Between Funds and Dealers	p.21	12.5 Regulation of Blockchain Asset Trading Platforms	p.23
8.4 Regulation of Programmers and Programming	p.21	12.6 Regulation of Funds	p.24
<b>9. Financial Research Platforms</b>	<b>p.22</b>	12.7 Virtual Currencies	p.24
9.1 Registration	p.22	12.8 Impact of Regulation on "DeFi" Platforms	p.24
9.2 Regulation of Unverified Information	p.22	12.9 Non-fungible Tokens (NFTs)	p.24
9.3 Conversation Curation	p.22	<b>13. Open Banking</b>	<b>p.24</b>
<b>10. Insurtech</b>	<b>p.22</b>	13.1 Regulation of Open Banking	p.24
10.1 Underwriting Processes	p.22	13.2 Concerns Raised by Open Banking	p.25
10.2 Treatment of Different Types of Insurance	p.22		
<b>11. Regtech</b>	<b>p.22</b>		
11.1 Regulation of Regtech Providers	p.22		
11.2 Contractual Terms to Assure Performance and Accuracy	p.23		
<b>12. Blockchain</b>	<b>p.23</b>		
12.1 Use of Blockchain in the Financial Services Industry	p.23		

## 1. Fintech Market

### 1.1 Evolution of the Fintech Market

#### Recent Developments

Ghana's fintech market covers the business, banking, health and insurance sectors. The Ghanaian fintech market has experienced significant growth over the past year.

#### *Mobile money services*

Mobile money services dominate the fintech landscape in Ghana. They are operated by telecommunications companies, with MTN Ghana, Vodafone Ghana and AirtelTigo Ghana as the active players in the industry in Ghana. Initially, their services were limited to the deposit and withdrawals of funds; however, the platforms now allow users to pay utility bills, obtain credit services, receive remittances, and send and receive money from banks. The banking sector has also adopted fintech solutions in service delivery, with a number of banks collaborating with fintech start-ups and other tech companies to offer mobile money services through banking apps. For example, GT Bank Ghana and Fidelity Bank Ghana have both partnered with Expresspay to provide mobile money services to customers. A Bank of Ghana Economic and Financial Data report indicated that the number of active mobile money users has increased to 401 million users with a total value of transactions at GHS82.9 billion as of December 2021. In a recent Bank of Ghana report on Fintech Statistics in Ghana, it was reported that, as at December 2022, the total volume of e-money transactions stood at 488.2 million and the total value of the transactions amounted to GHS122.1 billion (equivalent to USD9.5 billion).

#### *Ghana Interbank Payments and Settlement Systems*

The Ghana Interbank Payments and Settlement Systems (GhIPSS) is the national payment systems infrastructure provider and a subsidiary of the Bank of Ghana. It has a mandate to provide an effective and secure interoperable electronic payment platform to attain the goal of ensuring financial inclusion for all players in the Ghanaian economy. The GhIPSS's Mobile Money Interoperability (MMI) platform permits seamless transactions across various telecommunications networks. In December 2021, the Bank of Ghana Summary of Economic and Financial Data recorded that the total value of MMI transactions was about GHS402.6 million.

As part of its expansion project in the digital financial system, GhIPSS, in collaboration with the Ghana Association of Banks under the supervision of the Bank of Ghana, has created an all-in-one bank-wide platform known as GhanaPay. Ghana Pay is a mobile money service provided by universal banks, rural banks, and savings and loans companies to individuals and businesses. The platform was launched in June 2022 to allow all banks in Ghana to offer both banking services and mobile money services on a unified platform. The platform was designed for consumers with a mobile wallet whether or not they owned a bank account. With GhanaPay, merchants do not necessarily need to maintain banking relationships with several banks to receive bill payments from other bank customers.

GhanaPay allows customers to send and receive money on the platform, other telecom networks and bank accounts, deposit and withdraw funds at agent locations/banks, pay a GhQR merchant, buy airtime and data and pay bills. This latest innovation in the digital financial sector is timely as it addresses some of the challenges asso-



ciated with the current bank-centric models by providing an open application that leverages on the existing network infrastructure of the entire banking industry.

### *The use of QR Codes*

Ghana has upgraded its Fintech market by introducing Quick Response (QR) Codes. Ghana is the first country in Africa and only the third in the world to introduce a national QR Codes payment system. Ghana's Universal QR Code was officially launched in November 2020. The Universal QR Code is the first of its kind in the world and has the unique feature of catering to the needs of both the banked and unbanked sectors of the economy. Customers are able to effect instant payment for goods and services from varying sources such as mobile wallets, bank accounts and cards by scanning a QR Code on a smartphone or dialling the USSD code of the payment service provider. This is a monumental step towards achieving a "cash-lite" economy. The Universal QR Code has experienced significant growth since its launch in November 2020 as more than 15 institutions, comprising 11 financial institutions and four payment service providers, have gone live with the service.

### *Introduction of the Central Bank Digital Currency (e-Cedi)*

As part of the Digital Ghana Agenda, the Central Bank has recently collaborated with Giesecke+Devrient (G+D), a German Company that provides banknote and securities printing, smart cards, and cash handling systems to pilot a general-purpose Central Bank Digital Currency dubbed "e-Cedi" in Ghana. The digital currency or e-Cedi is expected to serve as a digital alternative to physical cash. The introduction of this currency is projected to drive further the government's digitalisation and cash-lite agenda. It also aims to facilitate payments without a bank

account, contract, or smartphone, thus boosting the use of digital services and financial inclusion amongst all demographic groups. The Central Bank is optimistic that this project will position Ghana to take advantage of this emerging technology.

### *The Fintech and Innovation Office*

In 2021, the Bank of Ghana set up the Fintech and Innovation Office with responsibility for the licensing and oversight of dedicated electronic money issuers, payment services providers, closed loop payment products, payment support solutions and other emerging forms of payments delivered by non-bank entities.

The Office will facilitate the acceleration of the bank's cash-lite, e-payments and digitisation agenda. The Office also generates policies that will advance fintech, innovation and interoperability in Ghana.

### *Crowdfunding policy*

The Bank of Ghana recently rolled out a policy on crowdfunding. The purpose of the policy is to advance the development and use of crowdfunding platforms and products for Ghana's banking sector.

This development signals the potential of digital platforms to transform the traditional crowdfunding model. The Bank of Ghana requests that entities wishing to use donation-based and reward-based models for crowdfunding should apply to the Bank of Ghana for a licence. This crowdfunding policy is expected to further the modernisation of the banking sector by ensuring financial inclusion. The regulation of crowdfunding will offer more protection, security and accountability to consumers, and safeguard their contributions. The models of crowdfunding permitted by the central bank are donation-based

and reward-based crowdfunding. These comprise the collection, holding and disbursement of funds and are made available to banks, specialised deposit-taking institutions (SDIs), dedicated electronic money issuers (DEMIs) and enhanced payment service providers (EPSPs). The Bank of Ghana collaborates with the Securities and Exchange Commission (SEC) to regulate debt (peer-to-peer lending) and equity models which hinge on securities, loans and leverage payment platforms.

Some fintech firms have applied to the SEC for a licence to operate crowdfunding platforms targeted at the agricultural sector.

### *Insurance companies*

Insurance companies have optimised their service provision by integrating technology into their core business functions, thereby making insurance policies accessible on mobile devices and digital platforms. Insurance services such as motor, property and life insurance are available digitally. Health insurance policies are widely patronised on fintech platforms.

In the past year, the National Insurance Commission has collaborated with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and UKAid to launch InnoLab, a programme designed to support and grow the nation's insurance technology start-ups. The InnoLab Accelerator Programme is intended to unearth market-ready solutions to make insurance more relevant and affordable for Ghanaians. The programme seeks to stimulate innovative digital insurance product solutions to drive inclusive insurance for MSMEs and the public.

One of the participants in this programme, Figtech Limited, a Ghanaian registered fintech start-up, has built an innovative customer First

Life Insurance App (MYFIG) by integrating innovative technology with traditional methods within the sector. MYFIG's objective is to improve affordability and accessibility to Life Insurance products to empower customers to make decisions. The company has been supported with EUR20,000 by GIZ to support the product and technology development of the app.

Health insurance policies are widely patronised on fintech platforms.

### **Future Changes and Challenges**

Ghana's economy, like many others, is grappling with the aftermath of the COVID-19 pandemic. Inflation rates are at a record high of 53.6%. The Ghana Cedi has also experienced a massive depreciation in its value against the US dollar, losing over half of its value within the last six months. This has affected commerce and other business activities negatively. Coupled with the current economic situation and the passage of the Electronic Transfer Levy Act 2022, which introduced the "e-levy" tax, Ghana's fintech market is at risk of losing its consumers who are mostly the unbanked and people in the informal sector of the economy within the next twelve months.

Notwithstanding the protests and opposition, the e-levy tax was enacted into law in May 2022. The tax initially imposed a 1.5% levy on electronic transfers valued above GHS100 (USD7.78). This has recently been reduced to 1% following an amendment to the Act. The previous threshold of GH100 has been removed under the new amendment. This means that all transactions below GHS100 are subject to the levy. Electronic transactions that fall under the levy include:

- mobile money transfers done between wallets on the same electronic money issuer;

- transfers from a wallet on one electronic money issuer to a recipient on another electronic money issuer;
- transfers from bank accounts to mobile money wallets, transfers from mobile money wallets to bank accounts; and
- bank transfers on an instant pay digital platform or application, which originates from a bank account belonging to an individual.

The introduction of e-levy has the potential to stem the growth of digital financial inclusion. It has already created panic, user distrust and insecurity, as evidenced by withdrawals and a refusal by some patrons to conduct payments with their electronic wallets. In rural areas especially, many people use a mobile money wallet as the primary means by which they send and receive money. The e-levy may discourage such people from sending taxable amounts and will reduce mobile money transactions and encourage people to use cash if there is no viable alternative.

## 2. Fintech Business Models and Regulation in General

### 2.1 Predominant Business Models The Main Fintech Models in Ghana

#### *Funds transfer*

This model allows customers to deposit and transfer funds via an online mobile payment platform or mobile banking application.

#### *Payment gateways*

Customers are able to conduct business transactions using online mobile devices. This is a payment service that works with the customer's preferred digital wallet or bank account to offer a convenient, overall and safer payment experience. It is a complete end-to-end online and

mobile payment transaction solution that enables consumers and businesses to send and receive funds.

#### *Bills payment*

This model allows customers to transfer money from digital platforms or mobile accounts to a creditor or vendor of public/private utility to be credited against a specific account.

#### *International remittances*

This platform allows customers to receive money directly into their accounts from cross-border accounts, and allows foreigners to transfer money to Ghana using digital platforms.

#### *Digital insurance/insurtech*

Customers can conveniently purchase insurance products through digital platforms. Customers have access to health and life insurance cover through the purchase of airtime and mobile money deductions.

#### *Digital lending*

This model affords customers the opportunity to quickly and easily apply for short-term loans through their mobile devices and receive credit decisions without delay. Identity and mobile accounts of customers are verified before disbursement of a loan.

#### *Digital investments*

With this platform, customers are able to securely invest in government treasury bills, bonds and other investment packages. Customers are able to withdraw these funds at will upon verification of the customer's identity. One such digital investment platform is the Achieve Project Investment Mobile App launched by Petra Securities Ltd, an investment broker company. The app enables customers to participate in fixed income instruments through online investment

accounts, which tracks their contributions, earnings and withdrawals in real time. The Achieve app offers a technology-enabled approach to investing by collaborating with SEC licensed investment managers to provide customers with curated financial products.

### *API service platforms*

This is a platform that allows fintechs to integrate their systems seamlessly. Fintechs that incorporate API service platforms are able to allow merchants and vendors to accept and send money from mobile money customers, process various payment options, multiparty disbursements, and reconciliation services. Companies such as Flutterwave, Hubtel and Paystack are examples of fintech companies that have successfully utilised API service platforms to provide curated services to their customers.

### *Bulk transactions*

As a fintech business model, bulk transactions comprise of the automated processing of cheques and ACH direct credit and debit services. The Bulk Payment Unit of the Ghana Interbank Payment and Settlement Systems Ltd is responsible for the management of all products of the company including bulk payment/transactions. Bulk Payment Services include Cheque Codeline Clearing with Cheque Truncation (CCC), Automated Clearing House Direct Credit (ACH DC) and Automated Clearing House Direct Debit (ACH DD). This fintech model is particularly used in processing pensions and salaries electronically.

### *Over-the-counter transactions*

In Ghana, over-the-counter transactions (OTC transactions) consist of transactions conducted by a customer with an electronic money issuer or its agents in cash without making use of an e-money account or mobile money wallet held in

their own name. OTC transactions are typically transactions where some portion of the transfer is intermediated by an agent and customers are less likely to be mobile money wallet users. Further, OTC transactions are subject to a single transaction limit of GHS500, an aggregate daily transaction limit of GHS2,000 and an aggregate monthly transaction limit of GHS20,000.

### *Crowdfunding*

This model entails the collection or mobilisation of funds in small amounts from different individuals to fund projects or support causes. In 2021, the Bank of Ghana issued a crowdfunding policy, which is intended to regulate crowdfunding activities in Ghana. Models of crowdfunding permitted by the Bank of Ghana include donation crowdfunding, reward crowdfunding, equity crowdfunding and debt crowdfunding/peer-to-peer lending. Donation and reward crowdfunding models comprise of collecting, holding and disbursement of payments. Eligible institutions that are allowed to operate a crowdfunding model are banks, Specialised Deposit-Taking Institutions (SDIs), Dedicated Electronic Money Issuers (DEMI) and Enhanced Payment Service Providers (EPSPs).

## **2.2 Regulatory Regime**

The Bank of Ghana is the main institution responsible for regulating fintech business in Ghana. Other State institutions as indicated below play critical complementary roles.

### **Bank of Ghana**

#### *Applications*

The Bank of Ghana is mandated to issue out licences and authorisation to banking and non-banking institutions that offer financial solutions using technology, like payment system services. Applicants are required to furnish the Bank of Ghana with company registration documents,



details of shareholders and proposed products. The Bank of Ghana may reject the application if the applicant fails to meet the requirements. Licences and authorisation may be granted if the Bank of Ghana is satisfied that the applicant has met the registration requirements within 90 days. The Payment Systems and Services Act outlines the permissible transactions, which include domestic payments, domestic money transfers and bulk transactions, among others.

### Suspensions and Penalties

A body corporate that engages in payment system services without a licence or authorisation is liable to a fine of 5,000 penalty units (with one penalty unit being equal to GHS12). A person who engages in payment system services without a licence is also liable to a fine of not more than 4,000 penalty units or to a term of imprisonment of not more than seven years. The Bank of Ghana wields the power to suspend licences if it decides that a licensed or authorised body does not meet the infrastructure requirements, or the affairs of the licensed or authorised body are being conducted in a manner detrimental to the interest of consumers. The Bank of Ghana may also invoke its power of revocation if it decides that a service provider is engaged in risky and unethical practices or a service provider provides false or misleading information in acquiring a licence. The Bank of Ghana may also impose administrative penalties on service providers who are derelict in complying with the conditions contained in the licence or authorisation.

### Data Protection Commission

The Data Protection Commission established by the Data Protection Act, 2012 (Act 843) is another regulator of the fintech industry. The primary role of the Commission is to ensure the privacy of personal data by regulating the processing of personal information, particularly

obtaining, holding, using or disclosing personal information. The Commission ensures that the processing of the personal data of consumers is done without infringing on the rights of the data subjects or users, including those using various fintech platforms. Processing of personal data must take into account the principles of accountability and lawfulness of processing. Fintech businesses are required to register with the Data Protection Commission before processing the personal data of customers. They are also required to adopt robust security measures to protect the integrity of personal data. Any unauthorised access to personal data should be communicated immediately to the Commission. A data controller that fails to register with the Commission, but processes personal data, is committing an offence and is liable on summary conviction to a fine of not more than 250 penalty units or a term of imprisonment of not more than two years, or both.

### Securities and Exchange Commission

The Securities Industries Act, 2016 (Act 929) established the Securities and Exchange Commission (SEC), which regulates service providers trading in securities. Fintechs that wish to provide financial securities solutions are required to apply to the SEC for a licence. The Commission maintains surveillance over the activities to ensure fair, orderly and equitable dealings in the securities. The Commission may exercise its powers of suspension or revocation of licences if it decides that a service provider has not complied with the conditions outlined in its licence.

### Cybersecurity Authority

The Cybersecurity Authority was established under the Cybersecurity Act, 2020 (Act 1038) to regulate cybersecurity-related matters and to regulate owners of critical information infrastructure. The Authority regulates cybersecu-

riety activities and promotes the development of cybersecurity in Ghana. The Authority is required to establish a platform of cross-sector engagements on matters of cybersecurity for effective co-ordination and co-operation among key public institutions. The Authority is also required to register owners of critical information infrastructure. It advises the government and other institutions on cybersecurity. The Authority also promotes the security of computers and computer systems in Ghana. The authority performs monitoring oversight over cybersecurity threats both within and outside the country, certifies cybersecurity products and services, provides technical support to law enforcement agencies in prosecuting cyber-offenders, and issues licences for the provision of cybersecurity services. Fintech firms are required to comply with the guidelines and policies issued from time to time by the Authority.

### **Anti-money Laundering Regulations**

The Anti-money Laundering Act, 2020 (Act 1044) requires businesses, including fintechs, to conduct their activities in a manner that prevents the commission of money-laundering, fraudulent transactions and the financing of terrorism.

### **National Insurance Commission**

Fintech businesses operating within the insurance industry are also required to register with the National Insurance Commission (NIC) pursuant to the Insurance Act, 2021 (Act 1061). The Payment Systems and Services Act requires payment service providers to engage in insurance models to get a licensed insurance company to underwrite their product.

### **Electronic Transactions Regulations**

The Electronic Transactions Act, 2008 (Act 772) seeks to provide for and facilitate electronic communication and related transactions. It aims

to remove and prevent the instatement of barriers to electronic communication and transaction. The Act further seeks to develop a safe, secure and effective environment for the consumer, business and government to conduct and use electronic transactions. To this end, the Act ensures that fintechs operate within an environment that is safe and secure.

### **2.3 Compensation Models**

Industry players are allowed to charge customers directly. Industry participants are required to notify the customer of any transactions (including fees and charges) by electronic notification or physical receipt. The notice must state the transaction amount, transaction type, unique transaction reference, date and time of transaction, and fees charged.

A payment service provider who intends to introduce changes to fees and charges is required to inform the customer seven days in advance through electronic short messages. A payment service provider must also notify customers electronically about charges with the option to cancel a transaction before authorisation.

### **2.4 Variations Between the Regulation of Fintech and Legacy Players**

The regulation of fintech industry players is greatly different to that of legacy players in that fintech industry participants providing financial services are primarily regulated by the Payment Systems and Services Act, among other enactments highlighted above, whereas legacy players such as banks that offer traditional banking services are regulated by the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

## 2.5 Regulatory Sandbox

### Bank of Ghana

The Bank of Ghana has established a regulatory and innovation sandbox pilot in collaboration with EMTECH Service LLC. The sandbox will be available to banks, specialised deposit-taking institutions and payment service providers, including dedicated electronic money issuers as well as unregulated entities and persons with innovations that meet the sandbox requirements. Innovations eligible for the sandbox environment will have to satisfy any of the following broad categories:

- new digital business models not currently covered, explicitly or implicitly, under any regulation;
- new and immature digital financial service technology; and
- innovative digital financial services products that have the potential to address a persistent financial inclusion challenge.

The Bank of Ghana will give preference to products and services leveraging blockchain technology, remittance products, crowdfunding products and services, e-KYC (electronic know-your-customer) platforms, regtech (regulatory technology), suptech (supervisory technology) and digital banking, among others.

### Securities and Exchange Commission

In 2020, the SEC issued guidelines on the regulatory sandbox. These guidelines provide a framework for the issuance of regulatory sandbox licences in order to conduct a capital market activity or related service for which there is an absence of provisions under any laws regulating the business or capital market activity. A person shall not be eligible for a regulatory sandbox licence from the Commission unless the applicant has fully complied with the applicable laws

of incorporation. An applicant must comply with the fit and proper criteria of the Commission. An applicant seeking a regulatory sandbox licence must submit an application using the common form with the required attachments to the Director-General of the Commission for consideration. Licensees of the Commission, or other firms that wish to provide capital market services or fintech firms operating within the capital market space and professional services firms partnering with or providing support to such businesses can apply to enter a regulatory sandbox to test innovative capital market products and services in the production environment but within a well-defined space and duration.

## 2.6 Jurisdiction of Regulators

### Bank of Ghana

The fintech industry is regulated by more than one institution. The Bank of Ghana is the main supervisory and regulatory authority in all matters relating to payment, clearing and settlement systems. The Bank of Ghana is mandated to issue licences and authorisation to non-banking and banking institutions, respectively, that intend to engage in payment services. Applicants are required to furnish the Bank of Ghana with documents covering the registration of their companies, details of shareholders and proposed products. The Bank of Ghana may reject an application if the applicant fails to meet the requirements. Licences and authorisation may be granted if the Bank of Ghana is satisfied that the applicant has met the registration requirements within 90 days. The Payment Systems and Services Act clearly outlines the permissible transactions, which include domestic payments, domestic money transfers and bulk transactions, among others. The Bank of Ghana's role is therefore limited to the issuance of licences for entities partaking in payment services.

## Data Protection Commission

Fintech entities deal with the personal data of their users in terms of the collection, processing and storage of data. The Data Protection Commission (DPC) established under the Data Protection Act is responsible for protecting the privacy of the individual and their personal data by regulating the processing of personal information, and to provide processes to obtain, hold, use or disclose personal information. The role of the DPC begins once fintech customers share or provide personal data by using the platforms, and this duty ends when there has been adherence to the data protection principles in the collection, processing and retention of data.

## Securities and Exchange Commission

Where a fintech company provides a digital tool for trading in securities, the SEC is the main body to govern that venture. The SEC regulates and promotes the growth and development of efficient, fair and transparent security marketing, by which investors and the integrity of the market are protected. The Commission formulates principles for the guidance of the industry, to monitor the solvency of licence holders and take measures to protect the interests of customers.

## Cybersecurity Authority

The Cybersecurity Authority was established under the Cybersecurity Act, 2020 to regulate cybersecurity activities in the country and regulate the owners of the critical information infrastructure. Thus, a fintech entity that owns or operates a critical information structure would be required to register with the Authority. The Authority also promotes the security of computers and computer systems in Ghana. Fintech firms are required to comply with the guidelines and policies issued by the Authority.

## Financial Intelligence Centre

The Financial Intelligence Centre (FIC), established by the Anti-money Laundering Act, ensures that fintech companies do not engage in money-laundering, terrorism-financing and economic crimes, and assists in the identification of the proceeds of unlawful activity. Fintech firms may register with the Centre and establish a formidable anti-money laundering and anti-terrorism financing policy. The FIC's role therefore begins with monitoring the activities of fintechs to ensure that they are compliant with the anti-money laundering laws, and ends when there has been strict adherence.

## National Insurance Commission

The National Insurance Commission regulates the activities of fintech firms that provide digital insurance policies and it ensures the effective administration, supervision, regulation, monitoring, and control of the business of insurance to protect insurance policyholders and the insurance industry other than health insurance. The Payment Systems and Services Act requires fintechs that engage in insurance models to ensure their product is underwritten by a licensed insurance provider. The National Insurance Commission must ensure that the product is licensed and that it is in compliance with the insurance laws.

## 2.7 Outsourcing of Regulated Functions

### Bank of Ghana

Regulated functions can be outsourced. The Bank of Ghana requires service providers that desire to outsource technology platforms, internal audit and risk management functions, and operational functions to inform the Bank of Ghana in writing. The authorised or licensed entity cannot outsource any of the operational functions if this is likely to impair the internal con-

trol of the licensed entity, as well as the Bank of Ghana's ability to monitor compliance.

The Payment Systems and Services Act requires licensed and authorised entities to enter into service level agreements in all outsourcing arrangements, and submit a copy to the Bank of Ghana within ten days after execution. The contractual terms must not result in delegation by senior management of its accountability. In addition, the relationship between the licensed entity and its clients must not be altered by the arrangements. The contractual arrangement should not undermine the licence requirements and must not suspend or revoke conditions under the licence.

Industry players are required by the Bank of Ghana to outsource to a regulated entity.

## Securities and Exchange Commission

The SEC, in accordance with the Securities and Exchange Act, may accord recognition to a company or an organisation as a self-regulatory organisation in relation to a specified segment of the securities industry. The Commission may accord recognition where the organisation or company has a constitution that is consistent with the Act, and has the capacity as well as the financial and administrative resources to carry out the function of self-regulator. The Commission by written arrangement may delegate a power or function to a self-regulatory organisation. The arrangement must provide the terms and conditions of power or the function delegated to the self-regulatory organisation by the Commission.

## 2.8 Gatekeeper Liability

The Payment Systems and Services Act, 2019 requires fintechs to institute an in-built control mechanism for complete audit trail. They are

required to have a complete record of accounts opened, tracking and monitoring transactions on their platforms, their internal policy, procedures and accountability structures pertaining to anti-money laundering and financial crimes. Service providers are further required to have appropriate and tested technology equipped with fraud monitoring and detection tools. An iron-cast cybersecurity policy must complement these efforts.

Service providers must ensure that transactions against a subscriber are authorised by the account holder and further confirm that the subscriber is duly notified of the transaction. They are to ensure sound and prudent management, administrative and accounting procedures and adequate internal control systems.

Appropriate security policies to safeguard the integrity, authenticity and confidentiality of data and the processing system must be in operation. Adequate business continuity capabilities, appropriate disaster recovery planning and effective audit functions to provide periodic reviews of the security control environment and critical systems must be made available. In addition, a service provider must ensure that the system maintains a complete audit log of all user activities for at least six years.

Industry players are required by law to take the necessary steps to secure the integrity of personal data in the possession or control of a person through the adoption of appropriate, reasonable, technical and organisational measures to prevent loss of, damage to, or unauthorised destruction and unlawful access to, or unauthorised processing of, personal data.



## 2.9 Significant Enforcement Actions

### Bank of Ghana

The Bank of Ghana may suspend the licence or authorisation of an industry player on the grounds that the service provider has failed to meet the infrastructure requirements of the Bank of Ghana and that the affairs of the service provider are being conducted in a manner detrimental to the interest of the payment systems.

The Bank of Ghana may also revoke a licence or authorisation where the service provider:

- fails to provide information requested by the Bank of Ghana, or refuses to permit inspections to be conducted;
- has provided false or misleading information for the purposes of applying for a licence or authorisation;
- engages in risky practices that threaten the payment systems and are detrimental to users and other providers;
- is declared insolvent by a competent court of jurisdiction;
- ceases to operate the business for more than six months; and
- fails to provide services within six months of being issued with authorisation or a licence.

A financial institution that operates a payment system without authorisation from the Bank of Ghana is liable to a fine of not less than 4,000 penalty units. An individual who operates a payment system without licence is liable to a fine of not less than 1,500 penalty units and not more than 3,000 penalty units or a term of imprisonment of not less than four years and not more than seven years, or both.

The Bank of Ghana may also impose penalties on service providers that fail to comply with the

terms and conditions of their licence or authorisation.

### Data Protection Commission

The Data Protection Commission may issue an enforcement notice directed at data controllers who have contravened any data protection principles to refrain from processing any personal data or personal data of the description specified in the notice. A data controller who is not licensed cannot process personal data.

### Cybersecurity Authority

The Cybersecurity Authority is duty bound to provide standards for cybersecurity education, hardware and software engineering, research and development, and practitioners in relevant industries. It may suspend the licence of an entity operating cybersecurity services if the licensee fails to renew its licence one month after expiration, or when a licensee fails to comply with the conditions contained in the licence. The Authority may revoke the licence of an entity registered to operate cybersecurity where the licence was obtained by fraud or the licensee ceases to carry out its authorised business. The Authority is mandated to impose administrative penalties on anyone operating cybersecurity services without a licence or anyone found in breach of cybersecurity principles.

## 2.10 Implications of Additional, Non-financial Services Regulations

### Data Protection Act

Industry participants may be required to register with the Data Protection Commission and comply with the provisions of the Data Protection Act. The Act requires that a person who processes data should take into account the privacy of the individual. Data to be processed must be directly obtained from the data subject. A data controller who collects personal data must do so

for a specific purpose which is explicitly defined and lawful, and related to the activities of the individual. A data controller is also enjoined to make a data subject aware of the purpose for which the data has been collected. Industry players are expected to take the necessary steps to secure the integrity of personal data in the possession or control of a person through the adoption of appropriate, reasonable, technical and organisational measures to prevent loss of, damage to, or unauthorised destruction, and unlawful access to, or unauthorised processing of, personal data.

Industry players may not provide, use, obtain or procure information relating to a data subject for the purposes of direct marketing, without the prior written consent of the data subject.

## Cybersecurity Act

The Cybersecurity Act also establishes a Sectorial Computer Emergency Response Team to collect and collate data on cyber incidents, as well as co-ordinating responses to cybersecurity incidents within the sectors. These include the public sector, banking and finance sector, security sector, telecommunications sector, and the utility and energy sector.

Industry players are required to have a cybersecurity policy for licensing and authorisation. Service providers are duty bound to have appropriate and tested technology equipped with fraud monitoring and detection tools. Industry players are also expected to comply with this critical legal framework, to enhance fintech services.

## 2.11 Review of Industry Participants by Parties Other than Regulators

Fintechs are required to ensure their books and accounts are audited, with a copy filed at the Bank of Ghana at the end of each financial

year. Service providers are to furnish the Bank of Ghana with details of their external auditors. In the case of banks or SDIs engaged in fintech, they are required to constitute a subcommittee of directors to exercise oversight and manage operations.

The Data Protection Commission requires data controllers to obtain a licence from the Commission before processing personal data. The Data Protection Act imposes duty on data processors to protect the integrity and privacy of data subjects.

Industry players belonging to various professional bodies may find that they also monitor and review the activities of members. The Electronic Transactions Act also establishes an industry forum for entities engaged in electronic transactions. The Forum serves as a platform to bring together industry players from time to time to discuss matters of common interest that relate to their industry. Industry players that engage in telecommunications also have their activities reviewed by the Chamber of Telecommunications, an advocacy institution made up of firms operating telecommunications services to assist in directing telecommunications policies and research. It promotes the interests of members through stakeholder engagements.

## 2.12 Conjunction of Unregulated and Regulated Products and Services

Industry participants can only offer regulated products.

### Bank of Ghana

The Bank of Ghana requires industry players to apply for a licence or authorisation before engaging in business. The Payment Systems and Services Act clearly outlines various products and services industry players are permitted

to explore. Any form of technological enhancement of products and services requires prior consent and approval from the Bank of Ghana. Industry players that engage in products and services that are not sanctioned by the regulator are liable for sanctions. The regulator may suspend or revoke the licence or authorisation of a defaulting industry participant. The regulator is permitted to impose penalties or issue directives to the defaulting entity to cease offering unapproved services. The regulator may, through various publications, warn the public against engaging in products that have not been approved.

### **Securities and Exchange Commission**

The Securities Industry Act established the SEC to ensure that industry participants operating in securities trading are licensed and offer regulated products.

### **Data Protection Commission**

The Data Protection Commission, set up under the Data Protection Act, also regulates the collection, processing and retention of data obtained from data subjects. It registers and licenses data controllers and issues enforcement notices to persons processing personal information unlawfully, to desist from same.

### **Financial Intelligence Centre**

The Financial Intelligence Centre, a body set up by the Anti-money Laundering Act, also ensures industry participants do not undertake activities relating to money-laundering, tax evasion and the financing of terrorism.

## **2.13 Impact of AML Rules**

In recent times, the use of services provided by financial technology companies has become a potential crime method through which criminal organisations commit various financial crimes.

It has thus become necessary for fintech companies to adhere to anti-money laundering rules and programmes set out by regulators.

Fintech companies are expected to adhere to the new compliance measures introduced by the Anti-money Laundering Act 2020 (the “AML Act”). The Bank of Ghana and Financial Intelligence Centre Anti-money Laundering/Combating the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction guidelines and the Bank of Ghana guidelines for Inward Remittance Services by Payment Service Providers are applied in conjunction with the AML Act.

The AML Act requires fintech companies to apply customer diligence/KYC measures in carrying out occasional wire transfer transactions, to verify the authenticity and veracity of customers’ identification and information. Fintech companies are prohibited from setting up accounts with fictitious names or maintaining anonymous accounts and are expected to keep records of their customers. They are also expected to put in security measures to prevent unlawful access to their platforms and report any suspicious transactions conducted on their platforms to the Financial Intelligence Centre.

In addition, payment service providers (PSPs) who provide inward remittance services are required under the Bank of Ghana’s guidelines to submit electronic reports to the Bank of Ghana, provide specific training on reporting requirements, fraud detection, money laundering and terrorism financing in line with the AML Act. PSPs are further expected to establish and implement effective internal controls for inward remittance business and to train staff adequately on such controls.

## Compliance Programmes

Enhanced PSPs and dedicated electronic money issuers are required under the guidelines to develop and implement an AML/CFT compliance programme that is proportionate to the risk, size and nature of the remittance business, which shall include the following requirements:

- apply know your customer (KYC), customer due diligence (CDD) and enhanced due diligence (EDD) on all beneficiary accounts;
- conduct a risk assessment on volume and value of the inward remittances, customers and the country of origin;
- enhance procedures for monitoring, detecting and reporting suspicious transactions to the Financial Intelligence Centre (FIC); and
- ensure staff are adequately trained and resourced to perform the requirements as set out in the points above.

Compliance with these guidelines and requirements may have additional cost implications for fintech companies. In Ghana, most payment service providers are start-ups with limited financial capacity. However, non-compliance may result in the imposition of administrative penalties and sanctions against the service provider. Some fintech companies are not equipped with sophisticated state-of-the-art systems to accurately determine illegal activity from legitimate transactions. Their systems are limited to processing a small sample of data and are unable to see the entire picture or make all the connections. Lastly, conventional AML/CFT preventative measures such as KYC/CDD, tend to act as roadblocks to financial-inclusion driven Fintech if not properly apportioned.

## 3. Robo-advisers

### 3.1 Requirement for Different Business Models

Different asset classes do not require different models. They exhibit similar characteristics and traits and are subject to the same laws and regulations.

### 3.2 Legacy Players' Implementation of Solutions Introduced by Robo-advisers

The introduction of robo-advisers has revolutionised the investment industry with information available on demand. Legacy players undertake transactions via a digital device or a fintech platform at approved flat rates. Legacy players have incorporated robo-adviser solutions as part of their mainstream services, for efficiency and convenience.

### 3.3 Issues Relating to Best Execution of Customer Trades

Best execution of customer trades is based on order-matching rules in accordance with price priority and secondary precedence rules (display precedence and time precedence).

## 4. Online Lenders

### 4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

There are no significant differences in the business or regulation of loans to individuals and small businesses. Individuals, a company, a partnership, an association and any other group of persons acting in concert, whether incorporated or not, are permitted to enter into a credit agreement.

## 4.2 Underwriting Processes

The Payment Systems and Services Act, 2019 stipulates that fintech firms that operate credit products must ensure that such products are underwritten by a licensed bank or SDI. Financial institutions offering online lending are also enjoined to engage the services of insurers or insurance companies to underwrite loans. These processes are dictated by the policies of the individual banks.

## 4.3 Sources of Funds for Loans

Loans are largely financed through deposits, as well as lender-raised capital from the banks. Financial institutions may raise funds through the stock exchange and apply the proceeds in online lending. Peer-to-peer lending is another mode of raising funds through crowdfunding platforms, which the Bank of Ghana recently made operational by the issuance of a policy guideline.

## 4.4 Syndication of Loans

Syndication of loans is largely achieved through crowdfunding. This involves the collection of funds, usually small amounts from different individuals, to support projects or causes through digital platforms. There are four major categories of crowdfunding, namely, donations, rewards, equity and debt crowdfunding.

The Bank of Ghana has issued a policy guideline for crowdfunding and requires entities seeking to engage in donation and reward crowdfunding models to apply to the Bank of Ghana for a licence. Service providers are to comply with data protection and anti-money laundering laws.

## 5. Payment Processors

### 5.1 Payment Processors' Use of Payment Rails

Payment processors can either use existing payment rails or create new ones.

### 5.2 Regulation of Cross-Border Payments and Remittances

The Bank of Ghana regulates cross-border payments and remittances. In February 2021, the Bank issued guidelines on inward remittances. The guidelines require fintech firms that wish to partner with Money Transfer Operators (MTOs) to engage in inward remittance services, to apply to the Head of Fintech and Innovation Office of the Bank.

The fintech firm must ensure that the MTO is a registered entity and licensed by a competent authority in its country of registration to carry out international money transfer services. There must also be strict adherence to data protection protocols in compliance with the Data Protection Act. Sharing of personal data must be in accordance with the principles of accountability and lawfulness of processing, and must not infringe on the privacy rights of data subjects.

The Financial Intelligence Centre also monitors incidents of money-laundering in cross-border payments. The Centre ensures that industry players have adequate internal policies and procedures to prevent money-laundering, financing of terrorism, and tax evasion.

## 6. Fund Administrators

### 6.1 Regulation of Fund Administrators

Fund administrators are regulated under the Securities Industry Act, 2016 (Act 929). Fund



administrators must be issued with a licence by the Securities and Exchange Commission (SEC) and must comply with guidelines set out by the regulator. In the case of pension funds, a fund manager shall comply with the SEC guidelines and the Investment Guidelines issued by National Pensions Regulatory Authority.

## 6.2 Contractual Terms

The contractual terms are based on regulations.

## 7. Marketplaces, Exchanges and Trading Platforms

### 7.1 Permissible Trading Platforms

The main trading platforms are the Ghana Stock Exchange (GSE) and the Ghana Commodity Exchange (GCX).

#### The Ghana Stock Exchange

The GSE was established to facilitate the mobilisation of long-term capital by corporate bodies through the issuance of securities and to provide a platform for trading issued securities. The mission of the GSE is to provide an efficient securities market for national economic development through access to capital and investment. The goal of the GSE is to become an internationally recognised securities market. A company is regarded as listed on the GSE when its securities are approved to be bought and sold on the stock exchange. Shares that have been newly issued cannot trade in the over-the-counter (OTC) Market before being listed on the GSE. The GSE operates a parallel market known as the Ghana Alternative Market (GAX). Its focus is on businesses with the potential for growth. The GAX accommodates companies at all levels of development, including start-up as well as small and medium-scale companies.

The Ghana Fixed Income Market (GFIM) also facilitates the secondary trading of all fixed income securities and other securities to be determined from time to time. The market was established by key stakeholders in the financial market led by the Bank of Ghana, GSE, Central Securities Depository Ghana Ltd (CSD), Ghana Association of Bankers, Ministry of Finance, Financial Market Association (ACI Ghana) and Licensed Dealing Members (LDMs) of the GSE. The GFIM is based on the existing licence that the GSE has to operate a market for securities. The main regulator for the market is the SEC.

#### The Ghana Commodity Exchange

The GCX is a private company limited by shares, structured as a public private partnership, with the government of Ghana currently the sole shareholder. The aim of the exchange is to establish links between agricultural and commodity producers and buyers, to secure competitive prices for their products, assuring the market quantity and quality as well as timely settlement of their trade. GCX business operations consist of a trading platform powered by a provider trading system and a warehouse storage operation linked to the exchange through an electronic warehouse receipt system (e-WRS), backed by collateral management services.

### 7.2 Regulation of Different Asset Classes

All asset classes are subject to the same regulatory regime, ie, the Securities Industry Act, 2016 (Act 929) and the SEC Regulations 2003 (LI 1728).

### 7.3 Impact of the Emergence of Cryptocurrency Exchanges

The emergence of cryptocurrency has not altered or impacted regulations, as the innovation is not recognised in Ghana. There is no specific regulation on cryptocurrency in Ghana's jurisdiction.

However, regulations in the Payment Systems and Services Act, the Cybersecurity Act and the Electronic Transaction Act currently regulate the fintech industry.

## 7.4 Listing Standards

A company applying for listing on the Main Board of the GSE of any class of its shares is, as a general rule, expected to meet the following requirements:

- minimum stated capital – it must have a stated capital after the public flotation of at least GHS1 million in the case of an application relating to the First Official List, and GHS250,000 for the GAX;
- minimum public float – shares issued to the public must not be less than 25% of the number of issued shares of the company;
- payment of shares – shares must be fully paid for as, except in very exceptional circumstances, the exchange will refuse a listing in respect of partly paid shares; and
- spread of shares – the spread of shareholders at the close of an offer should be adequate in the GSE's opinion, with at least 100 shareholders after the public offer for the Main Board and 20 for the GAX.

A company or institution seeking the admission of debt securities to the GSE may be considered for such admission if the security concerned has a total issue amount of not less than GHS1 million face value, or there are at least 50 holders of such securities.

In the case of government securities, there is no prescribed minimum in respect of either amount of issue or number of holders to permit admission to the GSE's list.

Debt securities for which listing is sought are created and issued pursuant to a trust deed duly approved by the SEC.

## 7.5 Order-Handling Rules

The SEC currently applies price priority and precedence rules.

## 7.6 Rise of Peer-to-Peer Trading Platforms

Peer-to-peer trading platforms are currently not allowed. However, the Bank of Ghana has issued a policy guideline on crowdfunding which permits peer-to-peer lending, and interested persons are required to apply for a licence. The regulatory challenges include unlawful activities in peer-to-peer trading, although the same is unregulated under Ghanaian laws.

## 7.7 Issues Relating to Best Execution of Customer Trades

The interest of the customer must be paramount and negotiations must be flexible to allow customers to secure better pricing. Industry players must uphold timely execution of contracts and the attainment of best results.

## 7.8 Rules of Payment for Order Flow

The payment order flow for equities is T+3, ie, the settlement date for equities is three business days after the transaction date. It is T+2 for bonds: in other words, the settlement date for bonds is two business days after the transaction date.

## 7.9 Market Integrity Principles

The Securities Industry Act outlines the following market integrity principles:

- a person who is connected to a body corporate six months prior shall not deal in securi-

ties of that body corporate because of access to vital information;

- industry participants are prohibited from employing a device or a scheme intended to defraud or deceive an entity;
- industry participants are prohibited from engaging in false or misleading trading – fictitious transactions meant to inflate the market are proscribed;
- market players are prohibited from engaging directly or indirectly in any act that is likely to lower the market price with the intent of inducing others to purchase securities; and
- dissemination of false and misleading statements seeking to destabilise the market is forbidden.

## 8. High-Frequency and Algorithmic Trading

### 8.1 Creation and Usage Regulations

There is no specific regulation in Ghana dealing with algorithmic trading. However, the Electronic Transaction Act, the Cybersecurity Act and the Payment Systems and Services Act regulate the digital and financial technology industry in Ghana.

### 8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity

Ghana does not recognise algorithmic trading and has no guidelines on requirements for registering as market makers when functioning in a principal capacity. However, the Securities Industry Act requires that any person who wants to be a market maker in securities trading must apply for a licence from the Commission and abide by the guidelines issued by the Commission.

### 8.3 Regulatory Distinction Between Funds and Dealers

The Securities Industry Act outlines the regulatory framework for mutual funds (funds) and market operators (dealers).

#### Mutual Funds

A person or entity that seeks to establish and operate a mutual fund, or seeks to issue an invitation to the public to acquire shares in a mutual fund, or poses as carrying on the business of dealing in mutual funds, must obtain a licence from the SEC. The directors operating the mutual fund must appoint an independent body to act as manager and also appoint an independent body to act as custodian, but this custodian must be a bank, an insurance company or any other financial institution. The directors of the fund are mandated to give directions which accord with the Act to the manager and also to determine the investment and general policies of the company. Failure to acquire a licence before operating a mutual fund attracts an administrative penalty of 4,500 penalty units.

#### Market Operators

By contrast, a person who seeks to be a market operator or dealer in various securities in Ghana must obtain a licence from the SEC. However, representatives of licensed dealers or market operators who act on behalf of the latter but do not personally deal with clients, do not require a licence to deal in securities. Furthermore, licences can only be issued to bodies corporate, except in cases where the dealer is an investment adviser.

### 8.4 Regulation of Programmers and Programming

Programmers in this sector are not currently regulated in Ghana. However, programmers who manage electronic systems, programs and

applications are regulated under the Electronic Transactions Act.

## 9. Financial Research Platforms

### 9.1 Registration

Financial research platforms and their participants are required to register for a licence with the SEC before the commencement of their research activities. There must be strict adherence to the requirements of the Payment Systems and Services Act, the Data Protection Act and the Electronic Transactions Act.

### 9.2 Regulation of Unverified Information

The regulators issue newsletters and information updates in a timely manner on their digital platforms. This helps to prevent the spread of rumours and other unverified information, to forestall any reliance on such information.

### 9.3 Conversation Curation

There must be a verification pool where information posted is scrutinised before being uploaded for public consumption. This is crucial in preventing the circulation of false or unverified information, to forestall any reliance on such information.

## 10. Insurtech

### 10.1 Underwriting Processes

The Payment Systems and Services Act requires fintechs that offer insurance products to ensure their products are underwritten by a licensed insurer. The National Insurance Commission regulates the insurance industry. The Commission requires the licensed insurer to submit a contract entered into with the fintech firm in respect of the insurance product for approval. The Commis-

sion will ascertain the viability of the product, as well as the applicable charges, before granting approval. The Commission will also verify how easily customers can access claims from the insurance product.

### 10.2 Treatment of Different Types of Insurance

Different types of insurance are treated differently by industry participants and regulators. The National Insurance Commission may license an entity to operate a life insurance business or non-life insurance business. A company licensed to operate a life insurance business shall not subsequently be licensed to operate a non-life insurance business and vice versa. An insurer licensed to operate non-life insurance business can engage in property insurance, motor insurance, accident insurance, travel insurance, liability policies, engineering policies and marine policies. The Commission also requires companies licensed to operate life insurance business to engage in products like pension and annuities products, funeral policies, endowment policies and whole life policies. Industry participants treat each product differently and each product differs in terms of its application requirements, the premiums to be paid and the amount to be claimed.

## 11. Regtech

### 11.1 Regulation of Regtech Providers

The Bank of Ghana has not specifically institutionalised and provided any legal framework for regtech providers in Ghana. However, the Bank did intimate in its Sandbox Pilot Guideline that it would give preference to products and services leveraging regtech solutions within Ghana's financial sector.

## 11.2 Contractual Terms to Assure Performance and Accuracy

The contractual terms must clearly define the rights and responsibilities of both parties. The financial service firm must impose adequate and measurable terms in the service level agreements. The contract terms must reflect the independence of the parties. Financial services firms must adopt the most appropriate pricing method for the financial institution's needs.

The Payment Systems and Services Act regulates the contractual relationships between financial services firms and technology providers. The contractual terms must not result in delegation by senior management of its accountability. The contractual arrangement should not undermine the licence requirements and must not suspend or revoke conditions under the licence. The contractual arrangements are dictated by both regulations and industry custom and must be signed by the parties, with a copy submitted to the Bank of Ghana within ten days after execution.

## 12. Blockchain

### 12.1 Use of Blockchain in the Financial Services Industry

Traditional players in the financial services industry can only implement blockchain technology as part of their services when licensed or authorised to do so by the Bank of Ghana. Currently, blockchain technology is not regulated by the Bank of Ghana because it is still in the exploratory stage, in spite of traditional players' desire to include this innovative technology in service delivery.

### 12.2 Local Regulators' Approach to Blockchain

Ghana's regulator, the Bank of Ghana, does not recognise or classify blockchain solutions as part of the financial services regulated in Ghana, largely due to its inherent risk. In a circular, the Bank alluded to the potential of blockchain to improve efficiency of service when prudently managed and encouraged traditional players to explore its potential pending the maturity and licensing of the technology in Ghana. The Bank is confident that services delivered on blockchain technology will be a good candidate for the sandbox environment.

### 12.3 Classification of Blockchain Assets

Blockchain assets are not regulated financial instruments in Ghana because they do not fall under the regulatory purview of the Bank of Ghana. This is attributable to the inherent risks associated with the services and the absence of a regulatory framework to govern the use of such assets.

### 12.4 Regulation of "Issuers" of Blockchain Assets

There is currently no regulation of issuers of blockchain assets or of initial sales of blockchain assets. A person who trades in these assets is therefore operating unlawfully.

### 12.5 Regulation of Blockchain Asset Trading Platforms

The SEC, which regulates trading activities and platforms in Ghana, does not recognise blockchain assets and no legal framework governing blockchain assets has therefore been instituted. Individuals who trade in these assets therefore operate unlawfully and at their own risk.



## 12.6 Regulation of Funds

Funds that invest in blockchain assets are not regulated in Ghana because both the Bank of Ghana and the SEC do not recognise or have any regulatory regime in place with regard to blockchain assets.

## 12.7 Virtual Currencies

Virtual currencies have not been defined by the Bank of Ghana because they are not recognised in this jurisdiction.

## 12.8 Impact of Regulation on “DeFi” Platforms

“DeFi” (decentralised finance) is not currently recognised or regulated by the Bank of Ghana. This is largely attributable to the high level of risk and lack of accountability associated with the use of this technology.

## 12.9 Non-fungible Tokens (NFTs)

NFTs and NFT platforms do not form part of the fintech regulatory perimeter in Ghana. Presently, the primary legislation that regulates fintech activities or operations in Ghana does not recognise NFTs and NFT platforms as part of the fintech operations landscape. There is currently no legal or licensing regime for blockchain technology in Ghana.

The Bank of Ghana as the regulatory authority of fintech activities has issued a notice on digital and virtual currencies operations in Ghana. In this notice, the bank alerts the public to the absence of regulation in the use and trade of virtual currencies and other related blockchain technologies.

There are, however, measures being put in place by the bank to develop and regulate blockchain technology in Ghana. An example is the Bank of Ghana’s sandbox pilot, launched in 2021, which

encourages the use of innovative technologies in fintech space including blockchain. The bank has also initiated widespread consultation with stakeholders and other international partners on the subsequent use of blockchain technology for the introduction of digital currencies in Ghana.

The Bitland project is a system that seeks to create a blockchain-based land registry system in Ghana. The project is being piloted by a private organisation, Bitland Ghana, in Kumasi. Bitland operates in three key phases: land survey; preparation of land titles and land registry; and land tokenisation. The first phase involves the use of land markers to create boundaries of the individual plots. The second phase involves the creation of title for the land on the blockchain by verifying the GPS co-ordinates of the land. When verified, the company will create a land title contract that includes owner names, GPS co-ordinates, block numbers and addresses. This information receives a timestamp and is stored in a database. The third phase, which is the tokenisation phase, involves converting the land titles and accompanying files into tokens that are both tradeable and traceable.

## 13. Open Banking

### 13.1 Regulation of Open Banking

Financial institutions are allowed to operate open banking and there are a number of laws regulating open banking in Ghana. An example is the activity of electronic money issuers and payment service providers.

Under the Payment Systems and Services Act, a payment service provider must ensure appropriate security policies and measures intended to safeguard the integrity, authenticity and confidentiality of data and operating processes that

are shared with third parties. The Act encourages payment service providers to have a system capable of inter-operating with other payment systems. At the same time, however, the Act enjoins payment service providers to desist from engaging in any act that would result in systemic risk or affect the integrity, effectiveness or security of the respective payment system.

Financial institutions must comply with the Data Protection Act and the Cybersecurity Act as well. The Data Protection Act provides that a person who processes personal data must avoid infringing the personal rights and the privacy rights of data subjects and also process the data in a lawful and reasonable manner. The Cybersecurity Act, 2020 also requires owners of critical information infrastructure to report any incident of cybersecurity to the relevant sectorial computer emergency response team or National Computer Emergency Response Team within 24 hours.

## 13.2 Concerns Raised by Open Banking

Open banking may offer benefits to consumers in the form of convenient access to financial data and services but it also potentially poses a risk to financial privacy and the security of data. Financial institutions require prior consent from customers before sharing personal data and must avoid sending unsolicited messages to customers. Banks must ensure that third parties use shared personal data in a lawful, reasonable and legitimate manner.

**Addison Bright Sloane** is a full-service premier law firm based in Accra with comprehensive industry knowledge across various practice areas and industry sectors. The firm's core practice areas include environmental, social and governance (ESG), corporate, commercial, data protection/privacy, infrastructure, finance, digital assets and international dispute resolution. Industry areas include technology (including fintech), telecoms, energy and natural resources,

real estate, intellectual property, insurance, infrastructure and digital rights and assets. The firm has a dedicated four-member technology team led by the managing partner and has advised a number of multinational companies on a number of major technology projects. Addison Bright Sloane's recent work in this area includes advising two global disrupters on their entry into Ghana.

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## Trends and Developments

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### Introduction

Ghana's fintech landscape largely covers the banking and financial services sector, insurance, telecommunications and the non-bank financial services. Ghana has had one of the most promising and scalable fintech ecosystems in Africa since the emergence and popularisation of the industry sometime in 2008. Ghana has one of Africa's rapidly growing financial technology and mobile money markets. Research by Boston Consulting Group in 2020 ranked Ghana as the world's third highest country for mobile money payment patronage, behind China and Kenya.

Ghana's fintech industry has been spurred on by the government's Digital Ghana Agenda. This initiative primarily targets the country's financial services sector, which was predominantly a cash-based, person-to-person contact-based economy, to become a cash-less/cash-lite, contactless digital economy with the principal aim of achieving financial inclusion and stability.

The fintech space in Ghana has undergone various stages of evolution. The "Sika Card" was first introduced in Ghana in 1997, a decade before the introduction of the first-ever mobile money service in 2008 by MTN Ghana. Since then, the ubiquity of mobile phones coupled with the ready access to internet broadband services has tremendously accelerated the growth of the industry in Ghana, with other telecommunication companies modelling their own version of the mobile money product to foster digital or electronic payment systems in Ghana.

According to the Bank of Ghana (which is the primary regulator of the fintech industry in Ghana), as at December 2022, there were a total of 699,592 registered mobile money agents, out of which 505,122 agents were active, as well as 55.3 million registered mobile money customers, of which 20.4 million were active users. The statistics further showed that the total volume of mobile money transactions recorded during the period was approximately 488.2 million transactions, valued at approximately GHS122.1 billion (equivalent to USD9.5 billion).

### The Bank of Ghana

The Bank of Ghana is the main regulator of the fintech industry in Ghana. It is mandated to licence banks and non-financial institutions engaged in fintech business in Ghana. Pursuant to the aforementioned mandate, the Bank has established the Fintech and Innovation Office specially dedicated to overseeing emerging technologies and business innovations that operate within the fintech space. There are six categories of fintech business licence:

- Dedicated Electronic Money Issuer Licence;
- Payment Service Provider Scheme Licence;
- Payment Service Provider – Enhanced Licence;
- Payment Service Provider – Medium Licence;
- Payment Service Provider – Standard Licence; and
- Payment and Financial Technology Service Provider (PFTSP) Licence.

The Bank of Ghana requires the licensees to adhere to international standards such as the

ISO/IEC 27001 – the information technology/security techniques/information security management requirements offered by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). According to the Bank of Ghana, it has so far licensed and approved the operations of about 46 fintech start-up companies operating under various licence categories out of the over 100 that have been registered in the country.

### *The Regulatory Sandbox Payment Framework*

In February 2021, the Bank of Ghana announced its decision to pilot a Regulatory Sandbox for the fintech industry, with the sole purpose of shaping the regulatory landscape in order to safeguard the industry and forestall related risks whilst also ensuring the constant drive of innovation and creativity. In other words, the regulatory sandbox has been created as a measure to generate appropriate responses to the influx of new innovations within the financial services industry to ensure financial inclusion, consumer protection and market integrity. Since the announcement, the industry has been anticipating the setting into motion of the regulatory sandbox. In response, in August 2022 the Bank of Ghana released the Regulatory Sandbox Framework, which contains the scope and context within which the sandbox would be operated.

The Bank of Ghana explained that the purpose of establishing the regulatory and innovative sandbox is to make it a tool for supporting responsible innovations and nurturing new business models. According to the Regulatory Sandbox Framework, the operation of the sandbox will entail small-scale, live testing of innovative financial products, services and business models by eligible financial service providers and fintech start-up companies in a controlled

environment and within a specified duration or timeframe under the supervision of the Bank of Ghana. That is, the regulatory sandbox permits the piloting of new inventions in a containment, in a manner that mitigates risks and also ensures that excessive costs are averted well before the final acceptance and implementation of the product. Therefore, the regulatory sandbox is to perform the dual role of testing new innovations and emerging technologies whilst also ensuring an active development of the regulatory environment in response to the inventions, to reverse the phenomenon of regulation falling behind the pace of digitisation in Ghana.

The Bank of Ghana, under the framework, has called upon banks, specialised deposit-taking institutions, payment service providers, dedicated electronic money issuers, financial holding companies and other non-bank financial institutions to apply in order to participate in the regulatory sandbox. The regulatory sandbox has been open to a limited scope of innovations and emerging technologies such as new digital business not covered under any regulation, new and immature digital financial service technology and innovative digital financial products and services that can potentially solve recurring financial challenges within the country.

The sandbox also seeks to prioritise new innovations that leverage crowdfunding products, remittances, blockchain technology, electronic Know Your Customer (e-KYC) platforms, regulatory technology (RegTech), supervisory technology (SupTech) and digital banking and financial services targeted at financial inclusion for women.

The Bank of Ghana will operate the sandbox on a hybrid model, that is the Cohort Model and the Rolling Model, and will encompass four process-



ing stages: the application stage; the evaluation stage; the testing stage; and the exit stage.

In a related development, the Bank of Ghana, on 26 January, 2023, issued a communique inviting eligible banks, specialised deposit-taking institutions, payment service providers, dedicated electronic money issuers, non-bank financial institutions and aspiring fintech start-ups as well as other innovators to apply to enter the first session of the regulatory sandbox scheduled to take place from 13 February 2023 to 14 March 2023. The first ever regulatory sandbox in the country seeks to test innovations from the identified priority areas, which include remittances, crowdfunding and blockchain and distributed ledger technology.

### *Crowdfunding platforms*

The Bank of Ghana has indicated that it now permits and provides specific licences for operating donation and reward-based crowdfunding because the models entail the collection, holding and disbursement of payments and these are activities which are recognised and fall within the ambit of permitted activities under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

According to the central bank, holders of the Dedicated Electronic Money Issuers (DEMI) Licence are also permitted to provide the aforementioned crowdfunding services under their licences as sanctioned under the Payment Systems and Services Act, 2019 (Act 987). To ensure the protection of consumers and for transparency, the Bank of Ghana requires DEMI Licence holders to create new and specific merchant accounts dedicated to the collection of donations.

Further, the Enhanced Payment Service Provider (EPSP) Licence holders are permitted under the Payment Systems and Services Act, 2019 (Act 987) to engage in reward-based crowdfunding. However, where they seek to engage in donation-based crowdfunding, then there would be the need for a partnership with a specialised deposit-taking institution in order to obtain the licensing approval of the Bank of Ghana.

In respect of debt and equity crowdfunding, the Bank of Ghana has stated that it falls outside the ambit of the Payment Systems and Services Act since it largely borders on investment funds and investments fall outside the scope of permissible activities of institutions licensed under Act 987.

In Ghana, investments are regulated by the Securities and Exchange Commission pursuant to the Securities Industry Act, 2016 (Act 929). Therefore, any fintech start-up or technology-related institution desirous of participating in the debt or equity crowdfunding model is required to partner with an entity licensed and regulated by the Securities and Exchange Commission in order to operate lawfully in the country.

### *Ghana Pay by the Ghana Interbank Payment and Settlement Systems (GhIPPS)*

The Ghana Interbank Payment and Settlement Systems Limited is a subsidiary of the Bank of Ghana, established in the year 2018 with the sole purpose of ensuring payment systems interoperability to foster the goal of financial inclusion in the country. Since its inception, it has designed two monumental national payment systems infrastructure, namely, the Mobile Money Interoperability (MMI) Platform and the GhIPPS Instant Pay (GIP) Platform to facilitate transfer of funds across telecommunication networks and from mobile banking platforms to mobile money networks. In 2021, the Bank of Ghana

recorded a significant increase in the value of transactions recorded on the GIP platform in the sum of GHS31.4 billion.

In June 2022, GhIPPS introduced yet another innovation to further deepen digital financing in Ghana in order to accelerate the achievement of the goals of financial inclusion and a cashless economy. The new technological product, the Ghana Pay Mobile Wallet, is a bank-wide payment platform and a readily accessible mobile application to be offered universally to all incumbent traditional banks as well as non-bank financial institutions such as savings and loans companies.

## **Innolab Insurtech by the National Insurance Commission**

It is evident that Ghana's fintech landscape is populated by innovations in the realm of mobile payment systems and e-commerce platforms to the neglect of other critical aspects of the country's service delivery operations. The insurance industry is one such service delivery machinery that suffers from a dearth in innovations.

In response to this, the National Insurance Commission has recently implemented the Innolab Insurtech Accelerator Programme for the purpose of innovating insurance products and services in Ghana. The programme has been set in motion to promote the development of innovative digital insurance solutions and products to achieve the goal of inclusiveness of insurance access and to assist both individuals and particularly small and medium-scale enterprises with all insurance needs.

It is hoped that this initiative will inspire fintech start-ups to diversify their product offering to explore other areas of necessity in the financial service delivery industry.

## **Digital Regulatory Sandbox Platform by the Securities and Exchange Commission**

Ghana's Securities and Exchange Commission has been on-boarded by EMTECH, a global software company, onto its Digital Regulatory Sandbox Platform. EMTECH, which has previously partnered with the Bank of Ghana on its Regulatory Sandbox and the creation of the Central Bank Digital Currency, has now partnered with the Securities and Exchange Commission to create this regulatory sandbox, with the aim of accelerating the growth of innovation within Ghana's capital markets and investment terrain; and seeks to streamline the activities of actors in the industry in order to achieve an efficient and robust capital market structure.

The partnership has seen the deployment of the first-ever API Digital Regulatory Sandbox Platform, which will ultimately facilitate a collaboration among the SEC as well as other regulatory agencies and the central bank with fintech start-ups and SMEs for the purpose of developing and improving a robust regulatory environment.

The partnership largely aims to serve as a catalyst for boosting innovation, creating an appreciation of the associated risks and to provide clarity on the necessary regulatory improvements, in order to achieve the aim of financial inclusion whilst ensuring market integrity.

The partnership seeks to bridge the gap between the regulators and innovators in order to ensure that creativity and innovation is not stifled due to the lack of regulation. The framework has been operationalised to generate compliance requirements and also to automate risks assessment tools; it also serves as a platform for testing innovations.

## **Secondary Securities Trading and Aggregation (eXchange) – SecondSTAX Platform**

A Ghanaian fintech trading platform has been established by a Ghanaian fintech start-up known as the Secondary Securities Trading and Aggregation company (eXchange). The SecondStax platform was launched in September 2022 to function as a cross-border, multi-asset and order routing capital market portal.

The platform allows brokers, dealers, asset managers, pension funds and investors to access capital markets outside Ghana or their country of operation. It seeks to provide access to both debt and equity securities across many African stock exchanges and bonds. The platform operates a business-to-business capital markets infrastructure model, which will allow investment firms to trade and hold assets in multiple currencies to avert or mitigate single currency risks and to also reduce the incidence of unpredictability in returns.

The ultimate goal of the platform is to link the major exchanges in Africa under one trading platform. In a bid to jumpstart its operations, SoundStax has been able to raise an amount of USD1.6 million as pre-seed funding from a number of private investors and venture capital firms.

## **The African Continental Free Trade Agreement (AfCFTA) Hub**

In August 2022, Ghana's Ministry of Communications and Digitalisation (MoCD) and the Postal and Courier Services Regulatory Commission (PCSRC) launched the African Continental Free Trade Agreement (AfCFTA) Hub for the purposes of encouraging digital trade and e-commerce and to create a conducive environment for technology and fintech start-ups and SMEs as well

as other inventors of technological products and solutions to find markets in other parts of Africa.

The hub harnesses technology to streamline the process of trading, the financing of trade, discovery of market strengths and gaps, the transportation and transmission of goods and the means of linking producers and consumers across Africa. Therefore, the hub serves as a digitised assembly point with the necessary tools to capacitate businesses within the trade area in order to foster healthy competitive trading and the exportation of goods.

In order to access and participate in business operations via the hub or platform, each participating business will have to obtain an AfCFTA number and AfCFTA common transaction ID for transparency, ease of trade and for combating fraudulent activities on the platform. This measure is also to compel businesses to create trusted profiles on the platform for safe business transactions within the free trade area. With the hub, participating Ghanaian businesses can freely export their goods and services across Africa and beyond. Participating businesses are also required to register with other relevant agencies such as the National Information Technology Agency (NITA), the Cybersecurity Authority and the Postal and Courier Services Regulatory Commission. The hub is expected to bolster trading and e-commerce within the trading region and is also expected to make significant gains like other international fintech trading platforms such as Alibaba, Amazon and ebay.

## **The Ghana Digital and Services Payments Platform**

In consonance with the country's ongoing Digital Ghana Agenda, Ghana's Ministry of Communication and Digitalisation has created a centralised public sector payment platform called the

Digital Services and Payment Platform, accessible through the Ghana.Gov platform.

The goal is in accordance with the drive towards a cashless economy for the achievement of financial inclusion for all. The platform will essentially reduce physical money interactions within the public sector, which will then facilitate an enhanced monitoring of cash flow within Ghana's governmental agencies.

The platform will serve as a payment system hub for Ghana's major public sector services delivery schemes such as the Ghana Revenue Authority, the Passport Office, the Ghana Immigration Service and the Social Security and National Insurance (SSNIT). The scope of services or activities enabled by the service includes business registrations and permits, social services and welfare, births, deaths and marriages, police, justice and safety, and energy and petroleum.

## Conclusion

In spite of the enviable feat attained in Ghana's drive to a cashless economy through its many fintech initiatives and growth patterns, the sector is still experiencing a dearth in new innovations emanating from local innovators in order to keep abreast with the rapid pace of technological advancements.

The country's fintech arena is largely fixated on digital payment systems to the neglect of other potentially vibrant areas of fintech, which can tremendously bolster the financial inclusion agenda and ensure a scalability of the industry.

Fintech has enormous potential to be a major contributor to the country's GDP and could also create jobs for several scores of Ghanaians. Ultimately, the hope is that the various regulatory sandbox avenues created for industry players, innovators and investors will yield the desired outcome of encouraging innovation whilst safeguarding the regulatory environment to achieve the tripartite goal of fostering innovation, financial inclusion and financial stability.

Contributed by: Victoria Bright, Justice Oteng and Elsie Gyan, **Addison Bright Sloane**

**Addison Bright Sloane** is a full-service premier law firm based in Accra with comprehensive industry knowledge across various practice areas and industry sectors. The firm's core practice areas include environmental, social and governance (ESG), corporate, commercial, data protection/privacy, infrastructure, finance, digital assets and international dispute resolution. Industry areas include technology (including fintech), telecoms, energy and natural resources,

real estate, intellectual property, insurance, infrastructure and digital rights and assets. The firm has a dedicated four-member technology team led by the managing partner and has advised a number of multinational companies on a number of major technology projects. Addison Bright Sloane's recent work in this area includes advising two global disrupters on their entry into Ghana.

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