

# APPLIED FINTECH LEGAL ASPECTS AND REGULATION

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# FINTECH LEGAL ASPECTS AND REGULATION

FinTech is a reality, every day we assist to how technology-driven regulation in financial markets and services is impacting/reinventing/reshaping market structures, the way companies access and deploy capital, the information channels of investors, and the use of financial services by customers. New digital payment systems, digital or electronic currencies based on open source models, data analytics, online investment and finance platforms, are rapidly impacting traditional financial markets and services.

FinTech is defined\* as “technologically enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services”

\*Following the Financial Stability Board

# FINTECH LEGAL ASPECTS AND REGULATION

Fintech – Is there a way around regulation?



# FINTECH LEGAL ASPECTS AND REGULATION

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PSD 1: regulating payments handled by e-commerce platforms

PSD 2: regulating TPPs /Open Banking

The digital finance package: regulating crypto assets & Crypto-assets service providers – MICA regulation, Pilot regime for MI\_DLT, DORA

# FINTECH LEGAL ASPECTS AND REGULATION

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In line with the principle consisting of “applying existing laws and regulations to new models”, the Luxembourg legislator (Parliament) has not so far enacted numerous Fintech laws

Fintech actors and activities fall under the scope of existing laws and regulations, with the CSSF issuing specific secondary legislation through circulars or general guidance in a number of areas

Exception Blockchain law I&II

# FINTECH LEGAL ASPECTS AND REGULATION

There are as such in Luxembourg no patent restrictions to the development of Fintech, Regtech or Insurtech activities.

No one shall be authorised to carry out a financial activity without a licence in Luxembourg or out of Luxembourg. This does not mean that every Fintech needs a licence, but every Fintech carrying out a regulated activity – in general, providing financial services – does.

A Fintech company which would like to establish itself in Luxembourg shall accordingly define its business purpose and its activity in a sufficiently concrete and precise manner, so as to allow the regulator to determine whether a licence and, if so, which licence is required; mere technology providers will, for instance, not be required to apply for and obtain a licence

# FINTECH LEGAL ASPECTS AND REGULATION

Fintech companies, whilst building the services they offer on innovative technologies, often provide financial services and in that case they do fall – just like traditional companies providing financial services – into the scope of the CSSF’s supervisory competences (and whether or not a certain law or regulation then applies to such services depends on the Fintech product or service offering)

E.g.: Fintech payment products – such as the use of digital payment methods which are intended to be used as a means of payment for acquiring goods or services or as a means of money or value transfer – will be subject to the modified Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems



# FINTECH LEGAL ASPECTS AND REGULATION

## REASONS

Principal of same/similar services , same risks same regulatory treatment

Technological neutrality

Level playing field

Legal certainty

Support innovation fair competition

Consumer and investor protection and market integrity

Financial stability

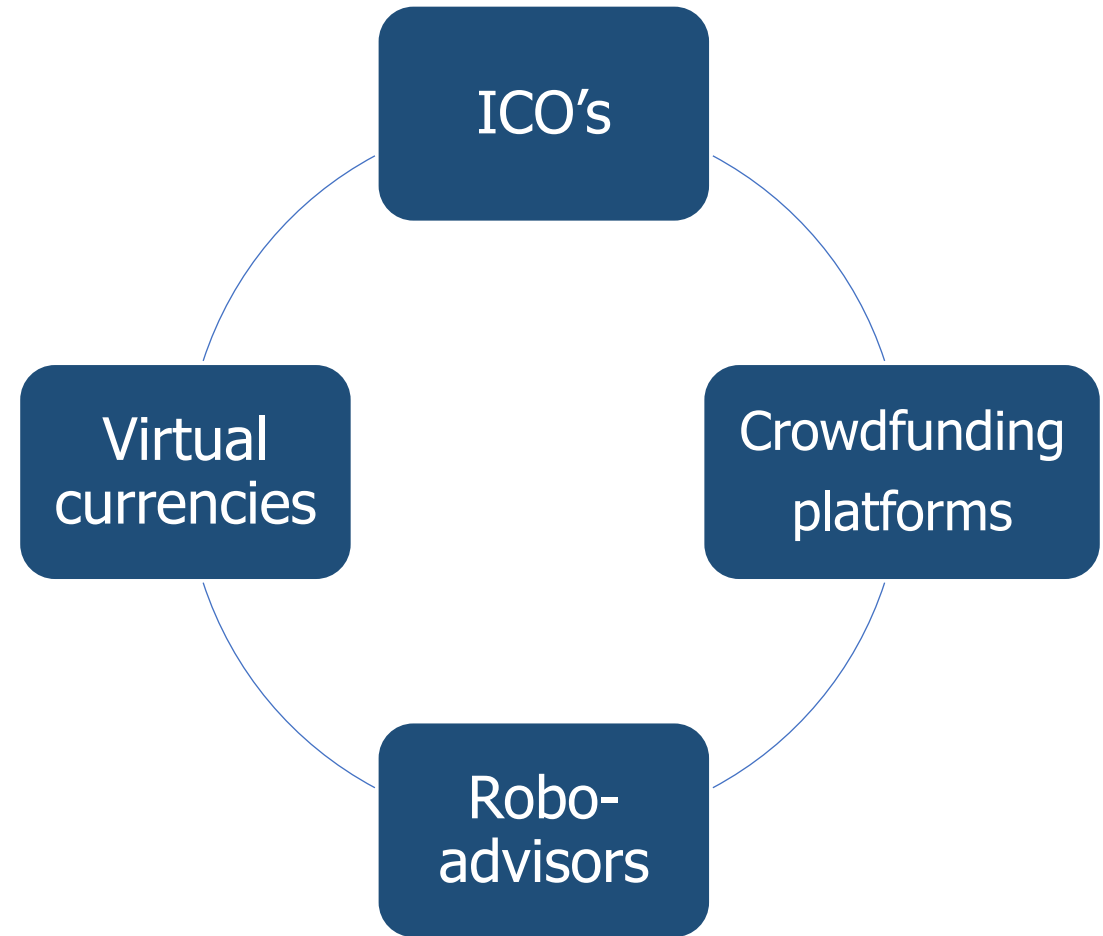




# FINTECH LEGAL ASPECTS AND REGULATION

Examples of how Fintech products have been taken into the scope of financial regulation:

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# FINTECH LEGAL ASPECTS AND REGULATION

A recent amendment of the AML/CTF Law has brought Virtual assets service providers (VASPs) that do not meet the conditions to be qualified as electronic money within the meaning of the Law on payment services or the conditions to be qualified as financial instruments under the law of 5 April 1993 on the financial sector, as amended into the scope of the AML/CTF Law.

The said law now provides legal definitions related to virtual asset service providers (VASPs), virtual assets, virtual currencies, safekeeping or administration service providers and custodian wallet providers and designates the CSSF as the competent supervisory authority for virtual assets and VASPs.

# FINTECH LEGAL ASPECTS AND REGULATION

## CHALLENGES

Compromise between  
technology and regulation

Understanding financial  
regulation and its requirements

Adapt product to be  
compliant with financial  
regulation



# FINTECH LEGAL ASPECTS AND REGULATION

## ADVANTAGES OF A REGULATION

= long-term performance

= competitive advantage

= can foster innovation



# FINTECH LEGAL ASPECTS AND REGULATION

Institutions shall have robust internal governance arrangements, which include:

a clear organizational structure with well defined, transparent and consistent lines of responsibility,

effective processes to identify, manage, monitor and report the risks they are or might be exposed to;

# FINTECH LEGAL ASPECTS AND REGULATION

adequate internal control mechanisms

including sound administrative and accounting procedures

*and remuneration policies and practices allowing and promoting a sound and effective risk management*

as well as control and security arrangements for information processing systems

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## THANK YOU!

Questions?

