



# ICLG

The International Comparative Legal Guide to:

## Fintech 2019

**3rd Edition**

A practical cross-border insight into fintech law

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Two general chapters. These chapters provide an overview of artificial intelligence in fintech, and of the recent trends and challenges in the financing of cross-border fintech start-ups.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 51 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Morocco



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## 1 The Fintech Landscape

- 1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).**

The fintech sector in Morocco is booming. The willingness of new industry players combined with mindful management by regulators allow the Moroccan fintech sector to offer to its customers a wide range of services, particularly in the fields of payment, insurance, scoring and, soon, crowdfunding.

Moroccan historical finance establishments are striving to switch their services and products to align them with the development of new technologies, while new fintech operators, especially start-ups and telecom operators, are competing with traditional finance players.

No official statistics on the number of fintech companies have been presented to date. However, it is estimated that since 2017 – the year in which NAPS, the first Moroccan fintech start-up providing secured payment services, was launched – the number of fintech operators has grown to exceed 20 entities, four of which were licensed by Moroccan central bank (“BAM”) in 2018.

In addition to these operators, 20 bank and insurance institutions are moving towards the adoption of fintech strategies, notably through mobile banking as well as electronic banking and insurance platforms.

Finally, it should be pointed out that at the beginning of 2018, Morocco was moving towards cryptocurrency, and mainly bitcoin, in so far as the country was ranked 36<sup>th</sup> in the world and 3<sup>rd</sup> in the MENA region as having one of the highest numbers of cryptocurrency transactions, despite the current but temporary ban by regulators (please see question 3.2).

- 1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?**

The concept of fintech is new to the Moroccan legal sphere. Thus, there is to date no specific regulation prohibiting a particular type of fintech business. However, the creation and operation of a fintech business should be analysed on a case-by-case basis, considering the existing legislation and regulation applicable to banking, finance and insurance.

However, the situation is quite different concerning cryptocurrency (please see questions 3.1 and 3.2).

## 2 Funding For Fintech

- 2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?**

For both new and growing businesses, investing in Morocco is based on the juxtaposition of equity financing, private equity, traditional bank financing and many other types of funding.

Generally, new corporations resort to 60 per cent self-financing, and the remaining 40 per cent is provided by banks and ultimately by possible State subventions; therefore, private equity financing is still underdeveloped and fails to foster the emergence of innovative start-ups.

Besides this, several Moroccan State and private programmes aiming at promoting fintech are ongoing. The main incentive programmes are developed by the Casablanca Finance City (“CFC”) and the Banque Centrale Populaire (“BCP”).

- 2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?**

There are not yet any specific incentives for investment in tech/fintech businesses, but they are available for encouraging the creation of and investment in small and medium-sized corporations.

More particularly, with respect to tax and customs incentives, the Moroccan tax law referred to as the “*Code Général des Impôt*”, which is amended each year by the financial law, provides for several exemptions such as VAT and corporate tax on new businesses during their first five years.

In addition, the Moroccan investment charter of October 3, 1995 is due to be replaced with a new version in 2019, which should come with important changes targeting the development of regions and possibly the enhancement of new business models, including new technologies and fintech.

It should be noted that Moroccan private equity laws, in particular Law No. 41-05 of February 14, 2006 relating to Venture Capital Organizations (“*Organismes de Placement en Capital Risque*”) as amended and supplemented, provide several tax incentives for investors and their target companies.



### 2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

An IPO in Morocco requires an issuing entity to be a joint-stock company “*société anonyme*” or a so-called limited partnership with a share capital “*société en commandite par actions*”. The implementation of an IPO is subject to conditions provided by the stock exchange law, “*Loi relative à la Bourse des Valeurs*” of September 21, 1993 as amended and supplemented, which provides for the eligibility of a corporation to enter into an IPO. Such an operation can be undertaken with one of the three listing markets – the principal market, the development market or the growing market:

- the principal market is reserved for large entities, with a minimum share equity of 50 million Moroccan Dirhams (“MAD”), which have been active for at least three financial years. In order to be admitted into such a main market, the aforesaid entities must issue a number of shares exceeding 250,000 with a minimum value of MAD 75 million;
- the development market is reserved for medium-sized entities, with a minimum turnover of MAD 50 million, which have been active for at least two financial years. In order to be admitted into such development market, the aforesaid entities must issue more than 100,000 shares with a minimum value of MAD 25 million;
- the growing market is reserved for fast-growing entities which have closed at least one financial year. In order to be admitted into such growing market, such entities must issue more than 30,000 shares with a minimum value of MAD 10 million; and
- the bond market is reserved for entities which have been active for at least two financial years; these entities may issue bonds with a value of more than with MAD 20 million and for a maturity exceeding two years.

### 2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

To the best of our knowledge, there have been no notable exits by the founders of fintech businesses in Morocco.

## 3 Fintech Regulation

### 3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

There is not yet any specific regulatory framework to regulate fintech businesses operating in Morocco. However, the general common law regulatory framework is *de jure* applicable, and any fintech business, as with any other corporation, must comply with the applicable Moroccan law.

As such, any fintech business must comply with Moroccan corporate laws, and, if a business is carrying out financing and banking activities, preliminary authorisations should be obtained from mainly BAM and the Moroccan market finance authority (“AMMC”).

The following activities are regarded as regulated activities, and any entity which carries these out requires a licence from BAM: (i) receiving deposits from the public; (ii) providing loans; (iii) issuing payment cards; (iv) providing investment services; (v) delivering

foreign-exchange operations; (vi) financing leasing transactions; (vii) guaranteeing transactions and undertaking securities operations; (viii) developing factoring operations; (ix) entering into gold, precious metals and coins operations; (x) providing insurance brokerage; (xi) providing payment services such as funds transfers, performance of payment transactions as an intermediary between payers and suppliers, supplying card payment transactions etc.; and (xii) other activities that are connected or similar to the aforementioned services.

In each service or group of services above, the applicant entity is granted a single licence by BAM. This licence lists each regulated activity that the entity is permitted to undertake.

### 3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

There is not yet any Moroccan regulation specifically directed at cryptocurrencies or cryptoassets.

However, and with reference to a number of media channels, the Moroccan exchange authority (“*Office des Changes*”) informed the public on November 21, 2017 that any transaction carried out via cryptocurrency is considered a breach of the Moroccan exchange laws and would trigger sanctions and penalties. Indeed, any funds transfer to or from Morocco should be carried out through licensed intermediaries such as banks, and only in lawful foreign currencies which are listed by BAM.

A second conjoint media announcement, dated November 21, 2017 and published by BAM and the AMMC together with the Moroccan ministry in charge of finance, warned the public that any use of cryptocurrencies as a method of payment would be a clear breach of the applicable laws, since no protection is offered to customers. The two announcements have not made a distinction between the different types of cryptocurrencies.

### 3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory ‘sandbox’ options for fintechs in your jurisdiction?

Financial regulators and policy makers in Morocco are receptive to fintech innovation and technology-driven new entrants. In particular, the bank’s Law No. 103-12 of December 24, 2014 (“*Loi relative aux Etablissements de Crédits et Organismes Assimilés*”) provided for alternative access payment services to persons duly licensed, other than banks. The payment services banks monopoly then ended, which was a strong signal for the liberalisation of finance activities, giving possibilities to, among others, fintech corporations. However, there is no regulatory “sandbox” option for fintechs in Morocco.

### 3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

As far as there is no specific regulatory framework for fintech businesses, fintech businesses which are established outside Morocco cannot freely and without licence enter the Moroccan financial market.

## 4 Other Regulatory Regimes / Non-Financial Regulation

### 4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

The collection, use and transmission of personal data is governed in Morocco by Law no. 09-08 of February 18, 2009 relating to the protection of natural persons with respect to processed personal data (“Law no. 09-08”). This law provides for personal data processors’ obligations and rights with respect to the persons whose personal data is processed. The obligations of any personal data processors are (i) to not process any personal data without the consent of the concerned person, (ii) to declare the process of personal data to the Moroccan competent authority, the “*Commission nationale de contrôle de la protection des données à caractère personnel*” (“CNDP”), and (iii) to apply for the CNDP’s authorisation in order to transfer the processed personal data outside of Morocco, or in order to process personal data considered as sensitive data. The rights of persons whose personal data is processed are the rights to information, to access, to modification and to objection.

### 4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

Law no. 09-08 is indeed applicable when the personal data processor is not located in Morocco. The personal data processor is the person who defines the means and purposes of personal data processing.

Therefore, if the means used in order to collect, store and transfer personal data are located in Morocco, the personal data processor located in a foreign country should appoint and communicate the identity of its representative in Morocco to the CNDP, declare to the CNDP its processing of personal data, and apply for an authorisation from the CNDP for the transfer of personal data outside of Morocco.

### 4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

The sanctions that apply for failing to comply with data privacy laws are: (i) imprisonment from three months to one year and fines from MAD 20,000 to MAD 200,000 for making/receiving a personal data processing declaration/authorisation and using personal data for other purposes than that agreed or declared; (ii) imprisonment from three months to one year and fines from MAD 20,000 to MAD 200,000 for processing the personal data of a non-consenting person; and (iii) imprisonment from six months to two years and fines from MAD 50,000 to MAD 300,000 for processing sensitive data.

### 4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Law no. 07-03 of November 11, 2003 relating to automatic data processing system crimes (“Law no. 07-03”) may be applied when any fintech businesses operating in Morocco faces a breach of their security systems. Therefore, Law no. 07-03 sanctions any fraudulent

access to automatic data processing systems by imprisonment from one to three months and fines from MAD 2,000 to MAD 10,000. When such fraudulent access result in the removing or modifying of processed data, the sanctions are doubled. In addition, any impeding of the functioning of automatic data processing systems is sanctioned by imprisonment from one to three years and fines from MAD 10,000 to MAD 20,000.

### 4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Law no. 43-05 of April 17, 2007 relating to anti-money laundering lists the acts which are considered as AML crimes along with the related sanctions. Such a list is not an exhaustive one and it includes, among others, the acquisition/transfer of assets in order to hide the origin of such assets when they are the result of the following offences: narcotic trafficking; human trafficking; immigrant trafficking; weapon trafficking; terrorism acts; corruption; fraud on monies; bill of exchanges; promissory notes; and any other means of payment.

Fintech businesses are necessarily subject to AML legislation. Firstly, fintech businesses must not be used as a means to launder money. Secondly, and as licensed entities, fintech businesses must comply with legal obligations which consist of controlling any transaction they carry out on behalf of their clients. They should disclose any doubtful transactions to the competent authorities.

### 4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

There are no other regulatory regimes which are applicable to fintech business operating in Morocco except civil law principles, and, among others, the commercial, competition, consumer and corporate laws.

## 5 Accessing Talent

### 5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The hiring and dismissal of staff in Morocco are regulated by the Moroccan labour law of 2004. There are two main types of employment contracts. The first is the fixed-term contract (“*Contrat à Durée Déterminée*”) concluded for a period of one year, renewable once. Where the fixed-term contract is extended further, it automatically becomes a permanent contract. The second is the permanent contract (“*Contrat à Durée Indéterminée*”), concluded for a non-fixed term.

Otherwise, an employment contract may be terminated by the resignation of the employee, their dismissal for gross misconduct or for technological, structural or economic reasons.

The hiring of foreign persons is subject to a restrictive regulation by which such foreign person should conclude a foreign employment contract with their local employer, and may be subject to a selective authorisation for working in Morocco should his activity in Morocco be possibly undertaken by a Moroccan resident with equivalent professional skills (please see question 5.3).

## 5.2 What, if any, mandatory employment benefits must be provided to staff?

Under Moroccan law, social security and mandatory illness insurance (“AMO”) are the obligatory benefits that every employer must provide to its employees.

Social security covers the risks of sickness, maternity, invalidity, old age and death, and it also serves family allowances. Social security is financed by contributions from both employers and employees.

## 5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

In Morocco, the recruitment of a foreign national is subject to the grant of an employment contract authorisation (visa). The employment contract must be drafted in accordance with the standard form contract for foreign employees in Morocco. The application for the visa is made through the online service “TAECHIR” ([www.taechir.travail.gov.ma](http://www.taechir.travail.gov.ma)), which sets out the supporting documents to be included in the application package.

## 6 Technology

### 6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Industrial property is governed by Law no. 17-97 of February 15, 2000 on industrial property, as amended and supplemented. This law covers all aspects of the protection of inventions, including patents, designs and trademarks.

Also, Law no. 2-00 of February 15, 2000 on copyrights and neighbouring rights, as amended and supplemented, deals with the other aspects of intellectual property, which relate to copyright. It should be noted that software/computer programs are protected in Morocco not by patent, but by copyright.

Applications for the protection of patents, trademarks and industrial designs are filed with the Moroccan Office of Industrial and Commercial Property (“OMPIC”).

In order to be patentable, the invention must be new, inventive and have an industrial destination. The patent title protects the invention for a period of 20 years in Morocco.

Trademarks and service marks are protected where they are lawful, distinctive and available. The registration of a trademark confers protection of a period of 10 years, which is indefinitely renewable.

The design must be new and differentiated. It gives the design’s right holder five years of protection, which is renewable four times.

### 6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

The ownership of IP deriving from industrial property such as patents, designs and models and trademarks results from the registration of such rights with OMPIC. The owner of IP rights may be the inventor, its successors, the employer where the invention has resulted from technical, human and financial means made available to the inventor, employee or the third person who acquired the invention.

Also, the ownership of IP deriving from a literary and artistic work belongs to its author since its creation does not require registration. However, it is recommended to file a declaration of the literary and artistic work with the Moroccan Copyright Office in order to obtain a sound protection. The protection is granted to the author throughout his life and a further 70 years after his death. As for moral rights, they are unlimited in time and are imprescriptible and inalienable. However, the economic rights would be the property of the employer where the literary and artistic work has been created according to an employment contract.

### 6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

The registration with OMPIC of an industrial property right in Morocco confers protection only in Morocco. Thus, protection outside of Morocco is granted through: (i) filing for the right on an international scale, which could be carried out by filing with each national office of the targeted countries for protection; (ii) filing with the regional office for countries adhering to a regional IP protection system; or (iii) a filing with the World Intellectual Property Organization (“WIPO”) to benefit from registration in all countries adhering to the various intellectual property protection treaties.

Ultimately, the protection of intellectual property rights is granted by their registration at the national level with OMPIC and at the international level with the WIPO.

### 6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

The exploitation of an intellectual property right is carried out directly by its owner, who enjoys an exclusive right of exploitation throughout the duration of the protection.

However, the linked rights to an industrial property title may be transferred in whole or in part. They may be subject, in whole or in part, to an exclusive or non-exclusive licence or to a pledge.

It should be noted that under Moroccan law, some legal restrictions on exploitation and licensing exist, such as the obligatory granted licences for the purposes of national defence.

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- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



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