

# Building a legal framework for secure digital payments

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Payments and  
emerging  
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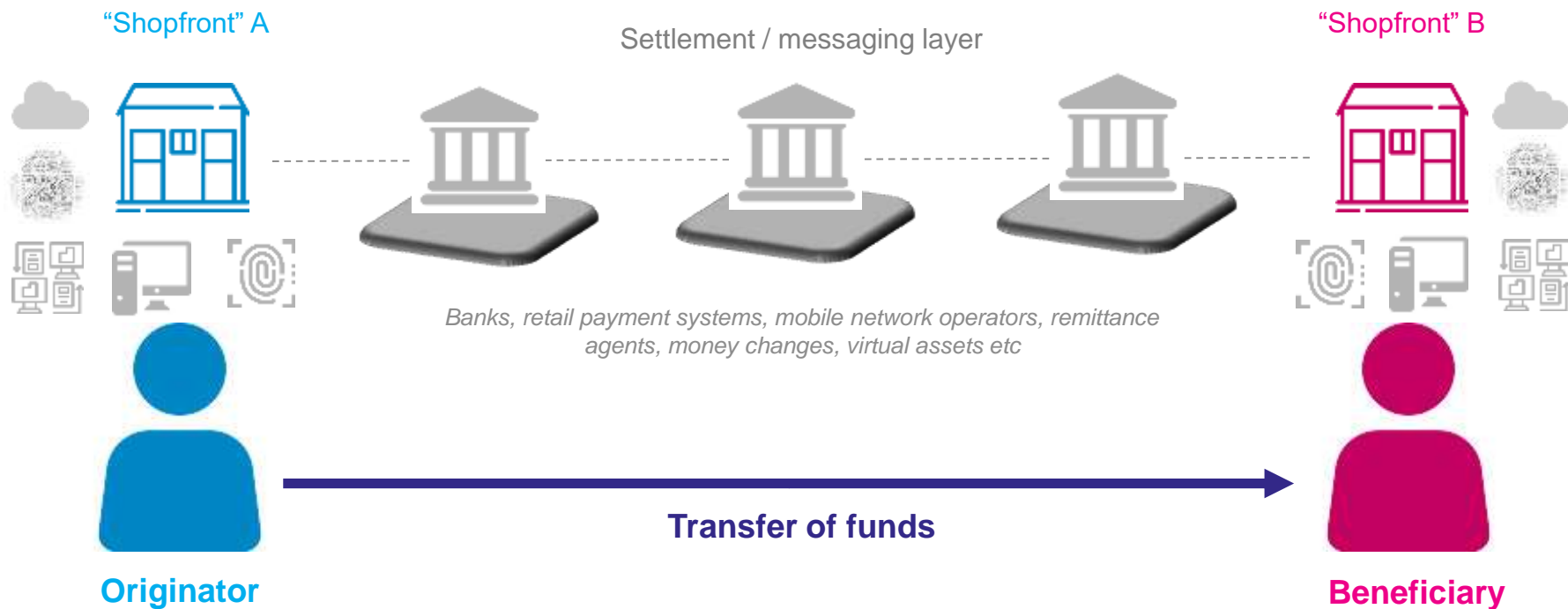
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Questions

# **Payments and emerging technologies**

# The payment chain x fintech



# The payment chain x fintech

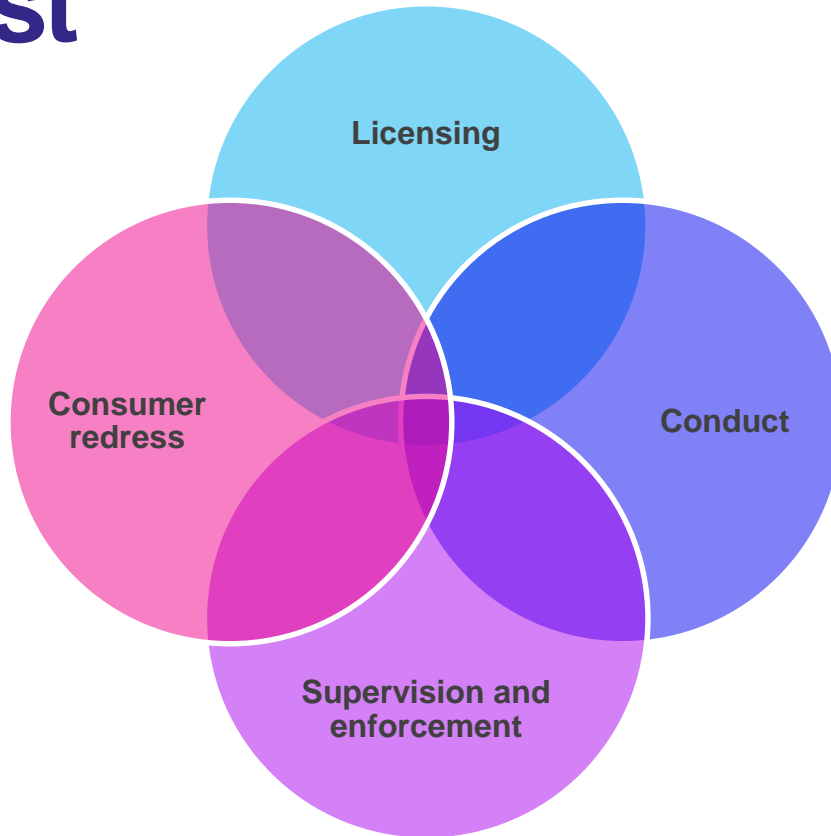
In this chain, participants deliver:

- Money
- Data
- Infrastructure
- Connectivity
- Security
- User experience
- Compliance

Other services may be overlaid on top of this framework – eg securities, advice.

# **Building a trusted payment chain**

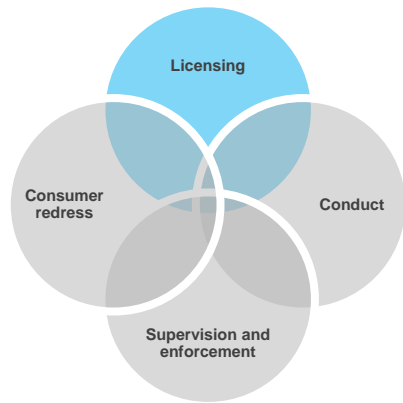
# Building trust



# Building trust

## Pillar one: Licensing

- Banks
- Stored value facility providers
- Remittance agents and money changes (MSOs)
- Retail payment systems
- Custodians
- Telecommunications providers / ISPs
- Insurers
- **Emerging:** Virtual asset service providers, cloud providers, others?



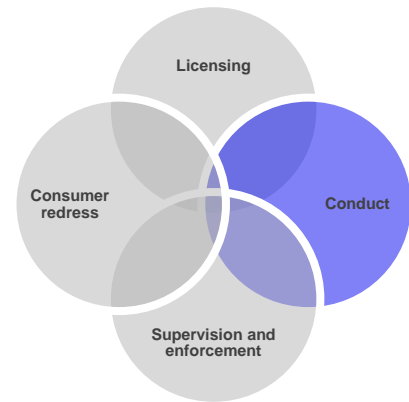
*Where is a customer at risk?*

*Who is systemically important?*



# Building trust

## Pillar two: Conduct controls



### “High touch” regulation

- AML/KYC
- Appointed compliance officer and MLRO
- Appointed senior managers
- Fitness and propriety of company, controlling shareholders, officers and certain other personnel
- Business plan
- Risk management
- Consumer protection
- Capital and liquidity requirements

### “Medium touch”

- AML/KYC
- Appointed compliance officer and MLRO
- Fitness and propriety of company, substantial shareholders, officers and certain other personnel
- Discrete number of other obligations

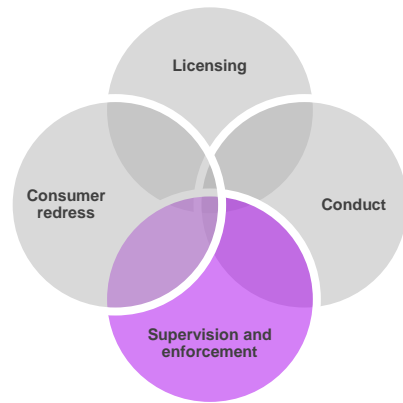
### “Light touch”

- AML/KYC
- Appointed compliance officer and MLRO
- Fitness and propriety of company, substantial shareholders, officers and certain other personnel

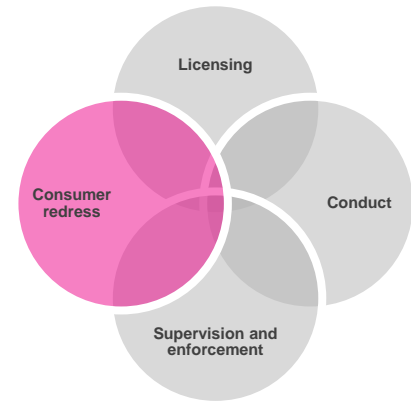
# Building trust

## **Pillar three:** Supervision and enforcement

- Risk-based
- Principles-based
- Transparent
- Clear
- Consistently and “cleanly” applied
- In accordance with established and documented principles



# Building trust



## Pillar four: Consumer redress

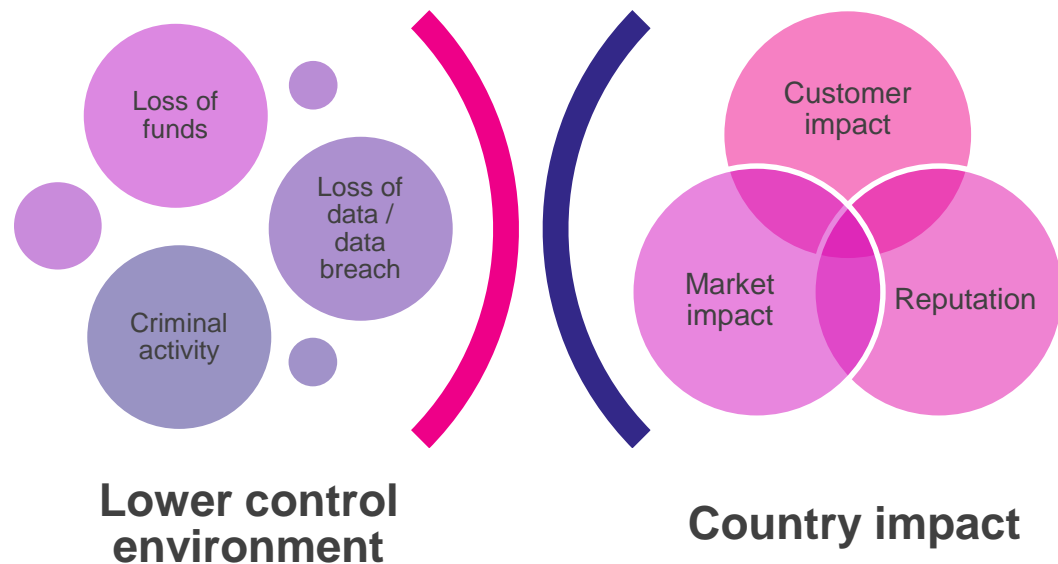
### Key standards

- Unfair contracts
- Unfair trade practices
- Data protection
- Competition law
- Anti-discrimination principles
- AI standards

### Resolution mechanisms

- Complaint handling channels and standards
- Apology protection legislation
- Conciliation process / ombudsperson
- Formal dispute resolution
- Execution of judgments

# Where things go wrong



On the other hand, **regulatory overreach** can stifle growth and innovation.

Industry **engagement**, drawing upon **best practice** and a **collaborative approach** can help mitigate this risk

# Creating a strong digital ecosystem

## Areas for discussion

- ☐ What are the incentives? And for whom?
- ☐ Enhancing inclusion, but minimising *exclusion*
- ☐ Systemic risk considerations – does “too digital” exist?
- ☐ Oversight across the payment chain – where do things go wrong?
- ☐ Cybersecurity controls
- ☐ Implementing earmarked regulatory enhancements
- ☐ Addressing areas of emerging risk
- ☐ Financial and digital literacy
- ☐ Regional collaboration
- ☐ Transnational regulatory bodies

**Data flows**

**emerging technologies**

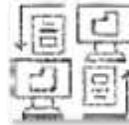
# Hot topics



**AI / machine  
learning**



**Digital identity**



**Open API**



**Blockchain and  
virtual assets**



**Price  
optimisation**



**Scoring systems**



**Smart tech vs  
surveillance**

# Recent case trends

- ❖ **Poor systems and controls**  
*(Hotels, airlines, web-based businesses and others)*
- ❖ **Advertising**  
*(Targeted content, direct marketing text messages, political persuasion)*
- ❖ **Cookies and other tracking technology**
- ❖ **Biometric data**  
*(HK Eastweek case, Swedish Skelleftea case)*
- ❖ **Identity schemes**  
*(Indian Aadhar case, Irish PSC case)*



# Data protection

What does trust  
mean for  
individuals?

- ☐ Security of their data
- ☐ Accepted parameters of personal data use
- ☐ Limitations to third party transfer / use
- ☐ Fair use
- ☐ That government will not have overwhelming access (without due process)
- ☐ Effective redress against breach

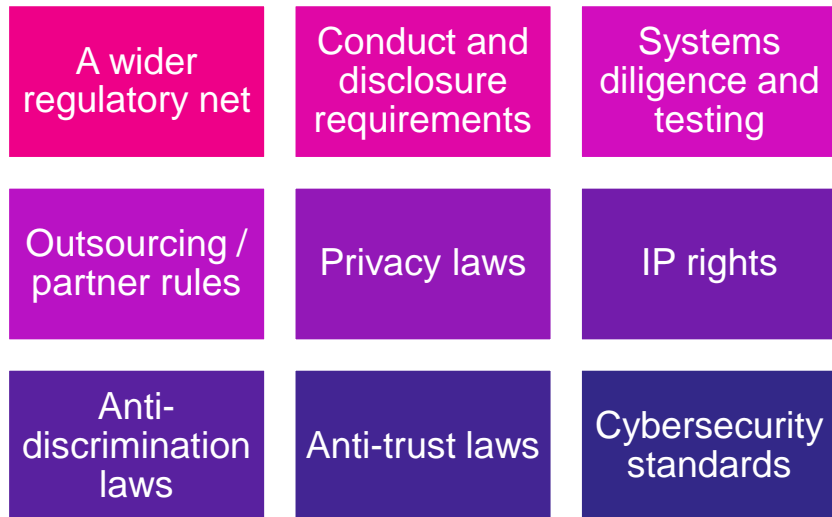
# Data protection

## Possible means of redress

- ☐ Personal data access / correction requests
- ☐ Regulatory assistance
- ☐ Sector-specific bodies
- ☐ Consumer protection agencies
- ☐ Direct rights of action through courts?
- ☐ “Name and shame”
- ☐ Impose liability on electronic intermediaries (ISPs; search engines)

# Regulatory trends

## Legal and regulatory framework development



### From the regulator's standpoint:

- Industry engagement
- Principles-based guidance, with developing specificity
- Thematic reviews
- Supervisory technology
- Specialist resourcing

# An evolution in thinking about data

Stewardship, risk management and accountability

## No surprise

Transparent

Genuine choice

Meaningful consent

Precise,  
concise  
and not  
legalistic

## No harm

Accountability

Privacy impact assessment

Respect for rights and interests

Data ethics / equity

Data  
minimisation,  
accuracy and  
security;  
algorithmic  
design

# Case study 1:

## HK data protection principles

**DPP 1**  
Collection

**DPP 2**  
Accuracy and  
retention

**DPP 3**  
Use

**DPP 4**  
Security

**DPP 5**  
Information to be  
generally available

**DPP 6**  
Access

But privacy rights are  
not absolute –  
security , defence,  
crime, emergencies  
etc.

# Case study 2: GDPR

- Key aim of GDPR is to place individual at heart of data protection ⇒ data subjects' rights expanded and bolstered
- The rights are:
  - the right to be informed
  - the right to rectification
  - the right to object
  - the right to erasure (be forgotten)
  - the right to restrict processing
  - the right of access
  - the right to data portability
  - rights in relation to automated decision making and profiling
- Requests must be actioned “without undue delay” and within one month of the request at latest unless necessary to extend due to the complexity and number of requests





# Data protection

## Areas for discussion

- ❑ Establishing a comprehensive data protection and privacy framework - building upon the Constitution of Fiji (s24)
- ❑ Interaction with existing requirements of:
  - ❖ Fiji Interchange Network (Payments) Act (s37)
  - ❖ Telecommunications Act (s54)
  - ❖ Fair Reporting of Credit Act (ss16, 20, 24)
  - ❖ Other sectoral regulations
  - ❖ Cyber-crime and consumer protection rules
- ❑ Establishment of data privacy regulator
- ❑ Establishment of enforcement channels

# An opportunity to leapfrog

## Global areas of focus and change

Regulatory standards	Products and services	Enforcement	Transactions
			
<input type="checkbox"/> Algorithmic design	<input type="checkbox"/> Credit	<input type="checkbox"/> Data minimisation	<input type="checkbox"/> Is data still valuable?
<input type="checkbox"/> Consent mechanisms	<input type="checkbox"/> Wealth management	<input type="checkbox"/> Biometrics	<input type="checkbox"/> Diligence and verification
<input type="checkbox"/> Data processors	<input type="checkbox"/> Insurance	<input type="checkbox"/> Data retention	<input type="checkbox"/> Transmission
<input type="checkbox"/> Cross-border/boundary data movement	<input type="checkbox"/> Virtual assets	<input type="checkbox"/> Doxxing	<input type="checkbox"/> Liability
<input type="checkbox"/> Data breach reporting and complaint management	<input type="checkbox"/> IoT integration	<input type="checkbox"/> Marketing	<input type="checkbox"/> Documentation
<input type="checkbox"/> Accountability standards	<input type="checkbox"/> "Trust as a service"	<input type="checkbox"/> Fintech compliance	
<input type="checkbox"/> Prosecution mechanisms / penalties	<input type="checkbox"/> Regtech	<input type="checkbox"/> Breach handling	
	<input type="checkbox"/> Social media		



# Questions

# Further questions



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## FT Top 10 Legal Innovator of the Year 2018

Financial Times Asia-Pacific

## “Thought leader in the fintech space”

Chambers Asia-Pacific 2019

## “One of the best that I have seen in the industry.”

Chambers Asia Pacific, 2017

## “Ursula is excellent to work with... first-rate technical skills...and an exceptional communicator.”

IFLR1000, 2017

Ursula McCormack is a regulatory specialist, focussing on financial technology, data regulation and financial crime.

### Blockchain and fintech expertise

Ursula is one of the leading digital legal specialists and blockchain experts globally. She has helped pioneer the creation of one of Asia's most respected fintech practices.

With over a decade of institutional regulatory expertise, Ursula has advised on over 180 blockchain-based assets, stored value facilities (SVFs), major OTC desks, global banks, multiple crypto-funds and several exchanges.

Ursula's work in the technology space covers:

- payment technologies;
- new types of distributed ledger technologies;
- virtual assets / cryptocurrencies;
- online brokerages and trading systems;
- mobile apps, including SVFs;
- custody solutions; and
- eKYC / KYC utilities and digital identity.

### Data protection / AI

Spanning her practice, Ursula advises on privacy regulation, digital transformation and algorithmic design.

- Privacy policies and procedures
- AI / algorithmic decision-making for asset management, banking credit and risk
- Open API systems
- Cross-border data transfer and outsourcing
- Data breach and regulatory enquiries

### Licensing track record

Ursula has advised on multiple successful regulatory licensing and approval applications over 12 years in Hong Kong, covering the full gamut of new applications, expansions and restructures.

### Financial crime systems and controls

Ursula has had a pivotal role in developing the Hong Kong AML/CTF framework, through her work as lead lawyer for The Hong Kong Association of Banks (HKAB) since 2011.

Ursula advises clients on AML/CTF and sanctions compliance and investigations. Ursula is a Certified Anti-Money Laundering Specialist with ACAMS. A key current focus is controls for virtual assets.

### Industry roles and government advisory

- Member, SFC Fintech Advisory Group
- Co-Chair, Policy & Advocacy Committee, Fintech Association of Hong Kong
- Member, KYC Working Group, Global Digital Finance
- Member, Fintech Working Group, ASIFMA

Ursula has been invited to brief governments, regulators, the APAC Deputy Governors of Financial Stability, World Bank, IOSCO, FSB Financial Innovation Network and other transnational bodies on emerging technologies.

### Market recognition

Ursula was recognised by the Financial Times as a "Top 10 Legal Innovator of the Year" in 2018 and a finalist for the Euromoney 2018 "Best in Compliance & Regulatory" Award. She is also rated by IFLR as a leading lawyer, and has been recognised by Chambers Asia-Pacific 2019.