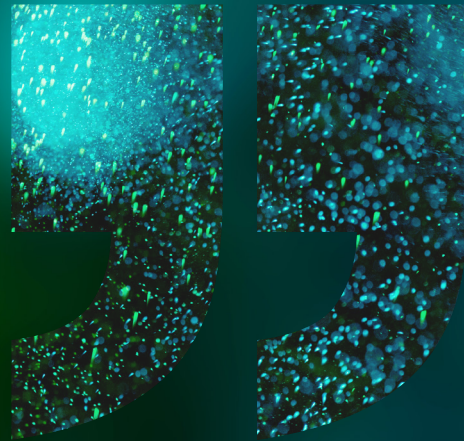


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FINTECH TRENDS 2024: FIVE TRENDS TO WATCH



— THOUGHT LEADERSHIP

JANUARY 2024

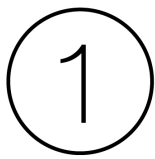


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FINTECH TRENDS 2024: FIVE TRENDS TO WATCH

While 2023 saw ongoing uncertainty and high-profile financial sector failures, it also brought regulatory progress around the world, including for landmark regulations on digital assets and AI. In 2024, we will see the next stage of pioneering regulation as blueprints and best practices begin to emerge, alongside compliance challenges. From the next phases of market development for AI, payments, cryptoassets, tokenisation and digital bonds to operational resilience challenges, we look ahead, highlighting the five key legal trends for global fintech in 2024.



Regulation of AI and uses in financial services

The regulatory frameworks that apply to the development and use of AI, including generative AI, are complex and multi-layered. The direction for a new, global phase of AI regulation is being set following publication of the [G7 and Hiroshima principles](#), the [Bletchley Declaration on AI safety](#) signed by 28 jurisdictions, the [creation of an AI Safety Institute](#), the Biden Administration's 2023 Executive Order on AI and AI Bill of Rights, and December 2023's historical political agreement on the EU's AI Act.

What's next?

- In the US, President Biden's October 2023 Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence represents a meaningful step in the regulation of AI technologies as it aims to advance a comprehensive framework for safe, secure, and trustworthy AI. While it primarily focuses on requirements for government agencies, we expect to see follow-on activity as US regulators bring its mandates to life.
- The EU's AI Act will set legally binding rules and requirements for AI systems and models, affecting actors across the entire AI value chain globally. This will move the dial on how the world will look at AI regulation and we can expect some legislators and regulators in other jurisdictions to follow suit.
- The UK currently does not envisage a bespoke regulatory framework for AI. Instead, its policy approach will be guided by five cross-cutting principles. 2024 should see publication of a UK AI Regulation roadmap and of guidance by key UK regulators on how these principles apply within their remit.
- International collaboration will continue. Globally, there will be increased requirements for (and scrutiny of) internal risk assessments around AI and compliance with existing laws, particularly in relation to transparency with users and regulators, preserving and enforcing privacy and intellectual property rights, senior management accountability and assurance around the safety of frontier AI. Global organisations must begin or refine compliance processes, looking at existing and anticipated uses of AI, including any related third-party relationships, defining, and implementing or refining, their AI strategy and risk management frameworks, and creating or reinforcing effective systems for regulatory horizon scanning and ongoing stakeholder education.

For more, read our publications on [the EU's AI Act](#), [the Biden Executive Order on AI](#) | [what businesses need to know](#) | [safety and security mandates](#), [the UK AI Safety Summit](#) and [Generative AI: The big questions](#).

Tokenisation and digital capital markets

In 2023, we saw continued exploration of how distributed ledger technology (DLT) might transform the financial and capital markets, including increased issuance, trading and settlement of digital debt securities, new collateral management solutions and the launch of enabling regulatory initiatives, including the EU Pilot Regime and the UK [digital securities sandbox](#) in December 2023. As [prudential requirements become clearer](#), we expect to see further development of DLT-based financial market infrastructures enabling financial institutions to tokenise conventional assets or issue natively digital assets whilst expanding secondary market trading.

2

What's next?

- Many of the digital bond issuances and related regulatory initiatives so far have been focused around Europe. During 2024, we will see more global activity with APAC in particular likely to see more issuance activity. For issuers keen to launch digital bonds, there are existing routes to market internationally.
- We will see the focus on debt and fixed income DLT products complemented by funds, equity and asset tokenisation. For example, Singapore has recently launched five industry pilots under Project Guardian to test promising asset and fund tokenisation use cases, (including in asset servicing and trade reporting) and is partnering with regulators in Japan, Switzerland and the UK. Keeping ahead of the rapidly evolving global regulatory landscape will be crucial to the success of these projects.
- We will also see increasing use of DLT for the clearance, settlement, recordkeeping and lifecycle management of securities transactions.

For more, read our article [The evolution of digital bonds in Europe](#), the [GFMA report on the Impact of DLT in Global Capital Markets](#) that we contributed to or [listen to our podcast with Fanny Palmieri and Bart Garré from Euroclear on its new D-FMI Platform for digital bonds](#).

Continued innovation in payments methods and systems

The global payments landscape is rapidly evolving as more jurisdictions consider the introduction of central bank digital currencies (CBDCs), and private-sector initiatives for the creation of stablecoins and other interoperable and efficient payment products develop at pace for both retail and wholesale use. In the US, the Federal Reserve launched its long-awaited instant payments service – FedNow – in July 2023, the first new Federal Reserve payment rail launched in more than 50 years. These developments are driving significant regulatory change globally.

3

What's next?

- Retail CBDCs offer new ways of payment that, in some cases, may ultimately present an alternative to card payments. Models for public-private collaboration for distributing CBDCs are becoming clearer and we anticipate further development throughout 2024. These models will build on 2023 proposals by the Bank of England as well as the groundbreaking Project Sela, led by the Bank for International Settlements (BIS) Innovation Hub. This aimed to reduce financial exposure for retail CBDC intermediaries by developing an approach where they are not required to hold client assets and CBDCs are almost treated as physical cash.
- While many CBDC projects are domestic, international bodies such as the BIS are focussing on CBDCs for cross-border payments. Building on lessons learned in Project mBridge (a DLT platform for multicurrency cross-border payments in CBDCs) and the Monetary Authority of Singapore's Project Ubin+, we will see more use cases establishing payment corridors for cross-border wholesale market transactions.



4

- For stablecoins, the era of regulation has come, with the EU's market in cryptoassets regulation (MiCA) coming into effect, as well as extensive new regimes in the UK, Singapore and Hong Kong, among others, expected during 2024. Regulation will bring greater credibility and stability to the global market but will also mean closer monitoring and increased enforcement activity. It is crucial that jurisdictions get the territorial scope of new rules right to ensure that the growth of new payment models is not stifled.
- We will see a surge of interest in new forms of payment, including deposit tokens (or tokenised deposits) - programmable ledger-based versions of existing client deposits held by commercial banks. These will increasingly be seen as a key tool for settlement of digital transactions. Interoperability - allowing for settlement between proprietary platforms of different banks - will be crucial and we expect to see the launch of some high-profile pilots to help solve for this. The ECB trials for wholesale central bank money settlement will provide useful insights.

For more, read our [recent joint report with Crafty Counsel on The State of Fintech Legal 2024](#) and our article [CBDCs - a new type of intermediary](#) or watch our recent webinar [the payments revolution](#).

Operational resilience

Ensuring continuity of key business services remains a global regulatory focus. Growing digitisation of customer experiences, greater automation, increased use of third-party providers and increasingly sophisticated cybersecurity risks all make firms susceptible to technology disruption.

What's next?

- The EU's wide-reaching Digital Operational Resilience Act (DORA) will become enforceable from January 2025, with detailed guidance expected to be finalised during 2024. However, compliance will require a significant uplift for many firms with policies based around existing EBA, EIOPA and domestic requirements and it will impact global groups that include EU operations. Firms should begin their scoping, impact and gap analyses now to be ready in time.
- DORA also introduces a pioneering regime for critical ICT third-party service providers, which, for the first time, will cause technology providers to fall within the financial services regulatory perimeter. Similar frameworks will also apply outside the EU with a new UK regime for critical third parties expected during 2024.
- In the US, following adoption of the final rule on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, the Securities and Exchange Commission (SEC) will continue to prioritise cybersecurity compliance and disclosure to investors of "decision-useful information" about cyber risk management. The New York State Department of Financial Services' November 2023 amendment to its cybersecurity requirements will have compliance repercussions for impacted firms in 2024 and may lead other state regulators to follow. We also expect to see continued focus by federal and state regulators on third-party oversight building on 2023 developments.
- Ahead of new regimes taking effect, we expect to see an increase in enforcement actions relating to operational disruptions internationally with regulators seeking to hold firms accountable in the face of increasing ICT risk and growing challenges from implementing digital strategies and fintech use cases. The same tech disruptions (and regulator criticism) may give rise to civil claims.

For more, read our articles on the [Amendment to New York's Cybersecurity Requirements for Financial Services](#) and [the EU's DORA](#) or watch our recent webinar [Evolving cyber and operational resilience requirements across Europe](#).

Cryptoassets – the post-regulation era

There were highs and lows for the crypto industry in 2023 from the conviction of Sam Bankman-Fried of FTX, Binance's historic settlements with multiple US regulators and Binance founder Changpeng Zhao's guilty plea to criminal charges to the end-of-year market rally in anticipation of approval by the SEC of the US's first regulated spot Bitcoin exchange-traded funds (ETFs). As the first comprehensive regulatory regimes begin to take effect in key financial centres, it is clear that both the market and the regulation governing it are maturing.

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What's next?

- We will see the next phase of implementation of crypto regulation and firms working through their authorisation processes. This includes MICA coming into effect in the EU and details of the UK's cryptoassets framework anticipated to be finalised and to start applying, in part, during 2024. Following publication of the Financial Stability Board's global regulatory framework for cryptoasset activities to promote consistent international regulatory and supervisory approaches in July 2023, we can expect more jurisdictions to follow. While there will be local nuances, the FSB recommendations and these first comprehensive regimes will serve as a blueprint and we should begin to see more consistency between global requirements in line with more established financial products.
- In the US, the SEC's January 2024 approval of 11 applications for spot Bitcoin ETFs (including from BlackRock, [VanEck](#), Fidelity and Grayscale) marked a watershed for US regulation of cryptoassets. In parallel, the SEC's "regulation by enforcement" programme will continue with its cases against large crypto exchanges over alleged registration failures under US securities laws, with courts and perhaps Congress expected to weigh in. Another area to watch is a potential clarification by courts of the scope of the US government's authority to sanction crypto mixing services such as Tornado Cash and otherwise address convertible virtual currency (CVC) mixing as a primary money laundering concern under PATRIOT Act authorities. Regulatory structures for stablecoins, anti-money laundering and illicit finance may gain traction in 2024 as lawmakers make strides to consensus.
- We will also see a continued revolution of insolvency and bankruptcy processes. We anticipate seeing more crypto settlement agreements and schemes of arrangement following recent market firsts. These will be buoyed by growing market knowledge and experience of insolvency practitioners and further legal certainty (for example, in the UK with the UK Jurisdiction Taskforce's upcoming report on digital assets and insolvency law). Ahead of new regimes taking effect, we will begin to see the most sophisticated market players taking the commercial decision to introduce their own resolution planning requirements – foreshadowing some of what new regulated client asset regimes are expected to require (similar to those that apply to banks holding client assets today).

For more, read our publications on [Custody of Cryptoassets](#), [the developing EU and UK regulatory landscape for cryptoassets](#) and [digital assets and English insolvency law](#).

To get in touch with one of our global fintech team, see our contact list at www.cliffordchance.com/fintechtrends2024

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