

PHILIPPINES

Law and Practice

Contributed by:

Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual
and Kristina Navarro

Quisumbing Torres see p.17



CONTENTS

1. Fintech Market	p.3	5. Payment Processors	p.10
1.1 Evolution of the Fintech Market	p.3	5.1 Payment Processors' Use of Payment Rails	p.10
2. Fintech Business Models and Regulation in General	p.4	5.2 Regulation of Cross-Border Payments and Remittances	p.11
2.1 Predominant Business Models	p.4	6. Fund Administrators	p.11
2.2 Regulatory Regime	p.4	6.1 Regulation of Fund Administrators	p.11
2.3 Compensation Models	p.5	6.2 Contractual Terms	p.11
2.4 Variations between the Regulation of Fintech and Legacy Players	p.6	7. Marketplaces, Exchanges and Trading Platforms	p.11
2.5 Regulatory Sandbox	p.6	7.1 Permissible Trading Platforms	p.11
2.6 Jurisdiction of Regulators	p.6	7.2 Regulation of Different Asset Classes	p.12
2.7 Outsourcing of Regulated Functions	p.7	7.3 Impact of the Emergence of Cryptocurrency Exchanges	p.12
2.8 Gatekeeper Liability	p.7	7.4 Listing Standards	p.12
2.9 Significant Enforcement Actions	p.8	7.5 Order Handling Rules	p.12
2.10 Implications of Additional, Non-financial Services Regulations	p.8	7.6 Rise of Peer-to-Peer Trading Platforms	p.12
2.11 Review of Industry Participants by Parties Other than Regulators	p.9	7.7 Issues Relating to Best Execution of Customer Trades	p.12
2.12 Conjunction of Unregulated and Regulated Products and Services	p.9	7.8 Rules of Payment for Order Flow	p.13
2.13 Impact of AML Rules	p.9	7.9 Market Integrity Principles	p.13
3. Robo-Advisers	p.10	8. High-Frequency and Algorithmic Trading	p.13
3.1 Requirement for Different Business Models	p.10	8.1 Creation and Usage Regulations	p.13
3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers	p.10	8.2 Requirement to Register as Market Makers when Functioning in a Principal Capacity	p.13
3.3 Issues Relating to Best Execution of Customer Trades	p.10	8.3 Regulatory Distinction between Funds and Dealers	p.13
4. Online Lenders	p.10	8.4 Regulation of Programmers and Programming	p.13
4.1 Differences in the Business or Regulation of Loans Provided to Different Entities	p.10	9. Financial Research Platforms	p.13
4.2 Underwriting Processes	p.10	9.1 Registration	p.13
4.3 Sources of Funds for Loans	p.10	9.2 Regulation of Unverified Information	p.14
4.4 Syndication of Loans	p.10	9.3 Conversation Curation	p.14

PHILIPPINES CONTENTS

10. Insurtech	p.14	12.3 Classification of Blockchain Assets	p.15
10.1 Underwriting Processes	p.14	12.4 Regulation of "Issuers" of Blockchain Assets	p.15
10.2 Treatment of Different Types of Insurance	p.14	12.5 Regulation of Blockchain Asset Trading Platforms	p.16
11. Regtech	p.14	12.6 Regulation of Funds	p.16
11.1 Regulation of Regtech Providers	p.14	12.7 Virtual Currencies	p.16
11.2 Contractual Terms to Assure Performance and Accuracy	p.15	12.8 Impact of Regulation on "DeFi" Platforms	p.16
12. Blockchain	p.15	12.9 Non-fungible Tokens (NFTs)	p.16
12.1 Use of Blockchain in the Financial Services Industry	p.15	13. Open Banking	p.16
12.2 Local Regulators' Approach to Blockchain	p.15	13.1 Regulation of Open Banking	p.16
		13.2 Concerns Raised by Open Banking	p.16

1. FINTECH MARKET

1.1 Evolution of the Fintech Market

The fintech market in the Philippines has been evolving steadily, expanding from the usual financial services – money business operations such as remittance, payments and digital wallets – to other fintech verticals such as distributed ledger technology (DLT), cryptocurrency, insurtech and regtech.

The local regulators that have the most intimate contact with the fintech industry in the Philippines – primarily the Philippines’ Securities and Exchange Commission (Philippine SEC), the Bangko Sentral ng Pilipinas (BSP) and the Insurance Commission of the Philippines – have consistently expressed an openness and positive regulatory view toward the developments offered by the fintech market, particularly to the extent that fintech players and their products, services or new ways of doing old things are able to engender financial inclusion for a population that is largely unbanked or underserved by traditional financial institutions.

Over the past 12 months, financial services offered by the fintech industry have expanded from traditional remittance services to other forms of money business operations, such as digital wallet services, domestic and cross-border payments and virtual asset service operations.

The BSP itself has taken steps to utilise artificial intelligence (AI) to assist in performing its mandate to oversee banks and other supervised financial institutions, including the use of application program interfaces (APIs) to connect financial service providers to the BSP, and the adoption of automated complaint-handling systems that would enable consumers to directly submit their concerns to the regulator through the usual mobile messaging systems or other

online methods. The BSP is also one of the first financial authorities to partner with RegTech for Regulators Accelerator (R2A), a pioneering project that is expected to provide the central bank with increased capabilities in performing digital supervision over local financial institutions. In December 2020, the BSP provided guidelines on the establishment of digital banks. Digital banks are now a distinct classification of banks under Philippine law.

Challenges for the Fintech Market in the Philippines

The development of the fintech market in the Philippines is not without its challenges. Fintech players looking to engage in business or expand their operations in the Philippines commonly grapple with issues around the process of establishing the appropriate business organisation to engage in business in the Philippines. Hurdles include burdensome bureaucratic procedures, costly fees and less-than-ideal timetables for completion. Uncertainties in the scope, extent or intent of local regulations likewise pose a significant factor. While these may at times be considered opportunities for creating additional lines of service, more often than not these grey areas are viewed as sources of execution risk that could adversely affect the development of new products or services.

On the other hand, local regulators are keenly aware of the need to manage the balance between stifling innovation and ensuring accountability in respect of, and compliance with, notable public policies on data privacy, investor protection and redress, anti-money laundering and cybersecurity – areas where the fintech market is perceived to be more open to abuse. Rationalising existing regulations and refining new and upcoming ones remain key challenges faced by local regulators tasked with fostering a progressive and collaborative environment within which the fintech market in the Philippines can grow.

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

2. FINTECH BUSINESS MODELS AND REGULATION IN GENERAL

2.1 Predominant Business Models

In the Philippines, fintech industry participants engaged in financial services currently comprise entities engaged in money service business operations, such as remittance agents, remittance platform providers, digital wallet service providers, virtual asset service providers and payments services entities (payment system operators). There has also been steady growth in the mobile lending sector, with fintech players engaging in microfinance operations through mobile applications and online platforms.

2.2 Regulatory Regime

The regulation of fintech industry participants engaged in financial services is based on the specific service or product offered by the participant, and closely follows the regulations applicable to non-fintech entities intending to engage in the same or similar service or products.

Money Service Business Regulations

The BSP regulates remittance and transfer companies (RTCs) or entities that provide “money or value transfer services”, or financial services that involve (i) the acceptance of cash, cheques, other monetary instruments or other stores of value; and (ii) the payment of a corresponding sum in cash or other forms of finance to a beneficiary by means of a communication, message or transfer, or through a clearing network, including services associated with a remittance business. RTCs include remittance agents, remittance platform providers, e-money issuers and virtual asset service providers.

Fintech industry participants intending to engage in money or value transfer services or money business operations are required to secure reg-

istration with, and procure prior authorisation from, the BSP.

Remittance Agents

A remittance agent is an entity that operates a remittance business network. Under prevailing BSP regulations on money service business operations, “remittance business” is broadly defined as “the transferring of funds or facilitating the movement of funds from the sender or originator to a receiver or beneficiary locally and/or internationally and undertaken by any financial institution”.

Remittance Platform Providers

A remittance platform provider is an entity that (i) provides a shared or common platform or infrastructure, and (ii) maintains a settlement account in order to provide funds for remittance transactions within its network. Under prevailing regulations, a foreign entity intending to act as a remittance platform provider must do business in the Philippines through its locally incorporated subsidiary and register as such with the BSP.

E-money Issuers

The issuance of e-money in the Philippines is regulated by the BSP. Under BSP regulations, e-money is defined as “monetary value that is accepted as a claim against its issuer and (a) electronically stored in an instrument or device (eg, cash cards, e-wallets accessible via mobile phones or other access device, stored value cards, and other similar products); (b) issued against receipt of funds of an amount not lesser in value than the monetary value issued; (c) accepted as a means of payment by persons or entities other than the issuer; and (d) withdrawable in cash or cash equivalent”.

E-money issuers are classified into three categories:

- banks;

- non-bank financial institutions supervised by the BSP; and
- non-bank institutions registered with the BSP as money transfer agents.

Virtual Asset Service Providers

The BSP regulates virtual assets and remittance transactions. Under BSP regulations, “virtual asset” refers to any type of digital unit that can be digitally traded or transferred, and can be used for payment or investment purposes.

BSP regulations cover virtual asset service providers or entities that offer services or engage in activities that provide facility for the transfer or exchange of virtual assets. A virtual asset provider must secure a certificate of authority to operate and register with the BSP. It must comply with minimum capital requirements, which amounts depend on whether the virtual asset provider has safekeeping and/or administration services.

Online Lending Services

Online lenders operating in the Philippines (other than banks or deposit-taking institutions) may be licensed as a lending company or as a financing company under the Philippines’ Lending Company Act or the Financing Company Act, respectively. Online lenders organised as lending companies or as financing companies are authorised to engage in lending activities. An online lender organised as a financing company and holding a quasi-banking licence may obtain funds from the public via the issuance of deposit substitutes (eg, the issuance, endorsement or acceptance of debt instruments for the borrower’s own account) for the purpose of re-lending.

Payment System

All operators of payment systems (OPS) are obliged to comply with the regulations and guidelines set out by the BSP. All OPS are required to register with the BSP. Registered OPS that

intend to operate within a designated payment system must secure prior approval from the BSP, which shall designate any payment system that:

- poses, or may pose, systematic risk that threatens the stability of the national payment system; or
- could have a major economic impact or undermine the confidence of the public in the national payment system.

Related Regulations: Regulation of Value-Added Services

The delivery of financial services through mobile applications or online platforms generally falls under the definition of value-added services that are subject to National Telecommunications Commission (NTC) regulation, pursuant to the Philippines’ Public Telecommunications Policy Act.

Value-added services are broadly defined as “services which add a feature or value to basic telephone service not ordinarily provided by a public telecommunications entity such as format, media, conversion, encryption, enhanced security features, paging, internet protocol, computer processing and the like”. The NTC considers value-added services as enhanced services beyond those ordinarily provided by carriers or telecommunications entities. Applications services, including all types of applications delivered to and/or accessed by users or subscribers – such as mobile banking, electronic payments, point-of-sale service and similar applications – are among those categorised by the NTC as value-added services.

2.3 Compensation Models

As far as is known, there is no Philippine regulation that imposes a particular compensation model on fintech players. Nevertheless, from a consumer protection perspective, fintech players must ensure that their consumers have a rea-

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

sonable holistic understanding of the products and services they may be acquiring or availing of, including the full price or cost to the consumer (plus all interest, fees, charges and penalties).

The terms and conditions of the product or service must clearly state whether interest, fees, charges and penalties can change over time. If applicable, the method for computing interest, fees, charges and penalties must also be included in the disclosure to consumers.

2.4 Variations between the Regulation of Fintech and Legacy Players

Fintech industry participants in the mobile financial services sector face slightly different regulation to legacy players. While there are certainly key areas where regulation is more or less consistent across the board (localisation, minimum capitalisation and other financial prudential measures), fintech players offering the same financial services as legacy players typically need to consider additional regulations applicable to the mode by which the fintech product or service is offered.

For instance, as a rule, mobile applications or online-based platforms geared toward financial services (eg, mobile banking and delivery of financial information) are generally considered value-added services under existing Philippine telecommunications regulations. These regulations (relatively more archaic than contemporary financial services regulations) impose additional compliance issues, from separate registration requirements to (in certain issues) foreign capital ownership limitations not otherwise applicable to legacy players offering financial services outside mobile or online applications or platforms.

2.5 Regulatory Sandbox

There are currently no Philippine laws, rules or regulations governing the establishment or conduct of regulatory sandboxes for the fintech

industry in the Philippines. However, the Philippine SEC and the BSP maintain a relatively open approach to new players in the industry seeking to conduct pilot testing of fintech products and services not currently regulated under prevailing legislation under a quasi-regulatory sandbox regime.

While the BSP has, in the past, publicly stated that it has instituted a regulatory sandbox for the fintech industry, this has been more akin to a test-and-learn approach applied on a case-by-case basis, with specific fintech players looking to engage directly with the BSP on the legal permissibility and potential regulation of their proposed product or service. In these instances, the BSP adopts a balanced regulatory approach focused on risk-based and proportionate regulation, active multi-stakeholder collaboration and consumer protection.

As there are no established guidelines on the establishment or operation of regulatory sandboxes yet (whether with the Philippine SEC or with the BSP), fintech industry participants proposing to engage in the delivery of fintech services or the conduct of fintech activities not otherwise specifically regulated under relevant existing regulations may consider directly approaching or engaging the Philippine SEC or the BSP to propose an ad hoc “sandbox” through which operations could be carried out under the regulator’s supervision. Note, however, that any action, permit or approval to operate in such a manner from the Philippine SEC or the BSP will be purely discretionary on the part of either authority.

2.6 Jurisdiction of Regulators

Within the financial services sector, key regulators for fintech players, products or services operating in this space, include the Philippine SEC and the BSP. Other significant regulators include:

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

- the National Privacy Commission (NPC), on matters involving data privacy compliance;
- the NTC, on matters involving the regulation of value-added services (including mobile applications or online platforms geared towards the delivery of financial services); and
- the Philippines' Anti-Money Laundering Council (AMLC), on matters involving compliance with AML and combating the financing of terrorism (CFT) regulations.

The Philippine SEC has primary jurisdiction and supervision over all corporations, partnerships or associations that own a primary franchise (ie, a corporate franchise) and/or a licence to do business in the Philippines. Within the financial services sector, the Philippine SEC exercises jurisdiction and supervisory authority over fintech industry participants or their activities relating to:

- cryptocurrency, to the extent it is classified as securities, including the conduct of initial coin offerings (ICOs);
- lending companies and financing companies organised under the Philippines' Lending Company Act and Financing Company Act, respectively; and
- investment companies formed under the Philippines' Investment Company Act, including delivery of financial advisory services (if in connection or conjunction with such investment companies).

On the other hand, the BSP exercises supervision over the operation of banks, non-bank financial institutions (eg, quasi-banks, money changers and/or foreign exchange dealers, financing companies and investment houses with quasi-banking licences) and other non-bank institutions engaged in money service business operations – ie, entities engaged in value or transfer services, including remittance compa-

nies, e-money issuers or digital wallet services, payments services and virtual asset services.

2.7 Outsourcing of Regulated Functions

Under prevailing regulations, banks and BSP-supervised financial institutions (including fintech industry participants engaged in money service business operations) may outsource certain functions considered not to be inherent. In particular, banks are prohibited from outsourcing inherent banking functions, such as taking deposits from the public, granting loans and extensions of other credit exposures, managing risk exposures, and general management.

Where non-inherent functions of a regulated or supervised entity are outsourced, the terms and conditions between the regulated entity and the relevant service provider are required to be embodied in a contract, and will need to incorporate mandatory provisions required by the BSP. These include provisions intended to ensure clear definitions of the rights and responsibilities of the parties; the establishment of mechanisms to provide assurances for performance, reliability, security, confidentiality and reporting to the BSP; disaster recovery or business continuity contingency plans and procedures; and rights of access to pertinent documents and information in favour of the BSP.

Moreover, in so far as the outsourced activities will involve the collection, processing or sharing of personal information (eg, those relating to the regulated entity's clients or customers), the requirements and obligations imposed under local data privacy laws will need to be complied with.

2.8 Gatekeeper Liability

Virtual asset providers are considered covered entities under Philippine AML regulations and are required to comply with the reporting obliga-

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

tions (on covered and suspicious transactions) imposed under such regulations.

2.9 Significant Enforcement Actions

Local regulators with the statutory mandate to regulate, oversee and license fintech industry participants engaged in financial services have inherent authority to impose fines and penalties (including imprisonment for directors, officers or other persons responsible for a corporate or other juridical entity), and to require a person or entity found to have been in violation of pertinent regulations to cease and desist its activities.

The Philippine SEC has had occasion to exercise its enforcement authority against certain companies it found to have undertaken ICOs without complying with the applicable Philippine securities registration regulations.

In January 2018, the Philippine SEC issued an advisory notice stating that “some of these new virtual currencies, based on the facts and circumstances surrounding their issuance, follow the nature of a security as defined by Section 3.1 of the Securities Regulation Code (SRC). However, unlike ordinary securities, these virtual currencies are neither guaranteed by any Central Bank nor backed by any commodity” (Section 1 paragraph 2 of BSP Circular No 944, Series of 2017). The Philippine SEC, in this particular advisory notice, said that when a virtual currency is analogous to the types of securities defined under the SRC, there is a strong possibility that such virtual currency is a security falling under the jurisdiction of the Philippine SEC and, therefore, the offer of such virtual currency to the public requires registration and compliance with the necessary disclosures for the protection of the investing public.

Following the issuance of the advisory, the Philippine SEC ordered Black Cell Technology Inc., Black Sands Capital, Inc., Black Cell Technology

Limited, and KROPS – companies determined by the Philippine SEC to have been engaged in the sale or offer of sale to the public of KROPS tokens and KropCoins – to cease and desist from doing so until there was full compliance with the licensing and registration requirements applicable to the offer of securities under Philippine law.

Furthermore, in 2019, the Philippine SEC issued cease and desist orders against various online lending platforms operating without the required authority to operate as a lending company or a financing company.

In January 2019, the NPC ordered Familyhan Credit Corp., an online lending company, to immediately stop processing the personal data of more than 6,000 borrowers following an investigation of complaints that it had put at risk the privacy of the data subjects, in violation of the Data Privacy Act of 2012 (DPA). This enforcement action followed the NPC’s order in October 2019 for several online lenders to take down 26 online lending apps that were used to shame delinquent borrowers.

2.10 Implications of Additional, Non-financial Services Regulations

Philippine data privacy regulations are primarily embodied in the Philippines’ Data Privacy Act, its implementing rules and regulations, and pertinent issuances by the NPC. For fintech industry participants, the application of these regulations will require:

- compliance with the general principles of legitimate purpose, proportionality and transparency in data processing, including consent and/or notification requirements (both for the collection, processing or sharing of personal information and/or for the processing of data via automated processing activities, automated decision-making and/or profiling);

- the incorporation of mandatory provisions in agreements involving the outsourcing of collection, processing, sharing, retention or other regulated activities in respect of personal data; and
- compliance with obligations imposed under Philippine data privacy laws on entities classified as personal information controllers and/or personal information processors, including data breach notification obligations and registration with the NPC under certain conditions.

AML Compliance

Fintech players engaged in the financial services sector – ie, those engaged in lending, financing, cryptocurrency or virtual asset services and money service business operations, whether under the supervision of either or both the Philippine SEC and/or the BSP – are automatically considered covered persons under Philippine AML regulations. As covered persons, fintech players are required to comply (in more or less the same manner as legacy players) with the registration requirements and the know-your-customer and reporting obligations imposed under such regulations.

Regulation of Social Media and Similar Tools

The use of social media and similar tools by fintech industry participants engaged in financial services is subject to BSP regulation. Under prevailing regulations issued by the BSP, supervised financial institutions intending to utilise social media and similar tools in the promotion of their products and services are mandated to establish an appropriate framework that will result in sound social media governance and risk management. Any such framework must, at a minimum, include clearly defined governance structures indicating the roles and responsibilities of the institution's senior management in setting the direction on the use of social media, including its alignment to the BSP's strategic goals and plans, the establishment of policies and

procedures governing (among others) content management and approval processes, acceptable and prohibited use, and social media crisis management plans and escalation procedures.

2.11 Review of Industry Participants by Parties Other than Regulators

As far as is known, the only bodies reviewing the activities of industry participants are the regulators.

2.12 Conjunction of Unregulated and Regulated Products and Services

Given the grey areas in the existing regulations, there have been instances where fintech players have offered unregulated products and services in conjunction with regulated products and services. For instance, until recently, the operation of payment systems in the Philippines was not subject to specific legislation and regulations. As a result, entities originally licensed only as e-money issuers were able to offer payments services to clients and customers without the need for separate registration or licensing for their payment services activities.

With the passage of the National Payment System Act in 2018, however, entities engaged in payments services, including operators of designated or non-designated payment systems, must be separately registered with, and licensed by, the BSP.

2.13 Impact of AML Rules

Fintech companies, which fall under the list of covered persons under Philippine anti-money laundering regulations (please refer to the discussion on covered persons under **2.10 Implications of Additional, Non-financial Services Regulation**), will be subject to compliance obligations under such regulations.

On the other hand, if the fintech company is not included in the list, but provides certain services

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

to financial institutions that are subject to Philippine anti-money laundering regulations, compliance by the fintech company to such regulations is usually imposed under the service contract between the fintech company and the financial institution.

3. ROBO-ADVISERS

3.1 Requirement for Different Business Models

There are currently no Philippine laws or regulations governing the delivery of financial advisory services through AI-based or algorithm-based platforms (such as robo-advisers).

3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers

This is not applicable in the Philippines.

3.3 Issues Relating to Best Execution of Customer Trades

This is not applicable in the Philippines.

4. ONLINE LENDERS

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

At present, there are no significant differences in the regulation of loans to individuals, small businesses and similarly situated borrowers in the Philippines.

4.2 Underwriting Processes

This is not applicable in the Philippines.

4.3 Sources of Funds for Loans

Online lenders operating in the Philippines (other than banks or deposit-taking institutions) may be licensed as a lending company or as a financing company under the Philippines' Lending

Company Act or the Financing Company Act, respectively. Online lenders organised as lending companies are authorised to engage in lending activities using funds sourced out of their own capital, or from fewer than 19 persons. An online lender organised as a financing company and holding a quasi-banking licence may obtain funds from the public via the issuance of deposit substitutes (eg, the issuance, endorsement or acceptance of debt instruments for the borrower's own account) for the purpose of re-lending.

Peer-to-peer lending is not presently regulated in the Philippines.

4.4 Syndication of Loans

See 4.3 Sources of Funds for Loans.

5. PAYMENT PROCESSORS

5.1 Payment Processors' Use of Payment Rails

Through Circular No 980, Series of 2017 (otherwise known as the National Retail Payment System (NRPS) Framework), the BSP has issued a policy and regulatory framework for the establishment of a safe, efficient and reliable electronic retail payment system in the Philippines. The NRPS framework covers all retail payment-related activities, mechanisms, institutions and users. It applies to Philippine peso-denominated domestic payments for goods and services, domestic remittances and fund transfers.

Under the NRPS framework, all clearing activities must be performed within the NRPS governance structure. The NRPS framework prohibits bilateral arrangements outside the NRPS governance structure, as such arrangements carry risks that cannot be identified, measured, monitored or controlled.

Other than the foregoing, payment processors may use existing payment rails or they may create or implement new ones as may be appropriate or commercially viable under the circumstances.

See **2.2 Regulatory Regime** for a discussion on payment systems.

5.2 Regulation of Cross-Border Payments and Remittances

Cross-border payments and remittances are regulated under the National Payment Systems Act (including the regulations issued by the BSP to implement the same) and/or the regulations on money service business operations of the BSP. Depending on the nature of payment or remittance services, entities that provide such services must register as operators of payment systems and/or remittance and transfer companies with the BSP.

6. FUND ADMINISTRATORS

6.1 Regulation of Fund Administrators

Fund administrators are subject to regulation by the Philippine SEC or the BSP, depending on the nature of the entity acting as such. Fund administrators (to the extent they are performing the same or similar functions as fund managers and hold an investment company adviser licence) of investment companies organised under the Philippines' Investment Company Act and holding an investment company adviser licence are subject to Philippine SEC regulation. Fund administrators or fund managers organised as banks and holding a trust licence are subject to BSP regulation.

6.2 Contractual Terms

Fund advisers (to the extent they are performing the same or similar functions as fund managers and hold an investment company adviser

licence) of investment companies organised under the Philippines' Investment Company Act are required:

- to manage the investment assets of the investment company and perform its functions in accordance with the investment company's prospectus, its agreements with the investors of the investment company, the provisions of the Investment Company Act and other pertinent regulations;
- to maintain accurate and adequate accounting and other records (for the benefit of the investment company and its investors);
- to implement supervision and control procedures, including procedures for establishing and segregating transactions; and
- to undertake periodic reporting to the Philippine SEC, the investment company and its investors.

To the extent certain of the fund adviser's functions and responsibilities are delegated to a fund administrator, a fund adviser would typically be expected to require the imposition of contractual obligations on the part of a fund administrator to ensure compliance with the foregoing.

7. MARKETPLACES, EXCHANGES AND TRADING PLATFORMS

7.1 Permissible Trading Platforms

Under the SRC, the following types of trading platforms or organised marketplaces are permissible in the Philippines:

- exchanges, defined as "organised marketplaces or facilities that bring together buyers and sellers, and execute trades of securities and/or commodities";
- over-the-counter markets; and

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

- alternative trading systems, for “innovative securities, securities of small, medium, growth and venture enterprises, and technology-based ventures”, and that constitute, operate, maintain or provide an electronic marketplace or facility for matching and executing trades in such securities.

Exchanges must be registered with the Philippine SEC as self-regulating organisations. Trading platforms intending to act as alternative trading systems are prohibited from setting rules governing the conduct of subscribers (other than the conduct of such subscribers’ trading on such facility), nor can such platforms discipline subscribers other than by exclusion from trading.

The Philippine SEC has suspended the trading of commodities futures contracts in the Philippines until further notice – and, as a consequence, the creation, operation or licensing of commodities futures exchanges in the Philippines.

7.2 Regulation of Different Asset Classes

There are not different regulatory regimes for different asset classes in the Philippines.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

To date, the Philippine SEC has not issued regulations specifically governing the operation of cryptocurrency exchanges.

Nevertheless, with the increasingly prevalent use of cryptocurrencies in the performance of payment services and remittance activities, such assets have been classified by the BSP as “virtual assets” for the purposes of regulating cryptocurrency platforms offering, as services, the conversion of cryptocurrency to cash and vice versa.

7.4 Listing Standards

The Philippine Stock Exchange, Inc. (the Philippines’ sole stock exchange) and the Philippine Dealing & Exchange Corp. (a secondary market for the trading of financial institutions’ securities) are organised and registered with the Philippine SEC as self-regulatory organisations. Both exchanges have adopted listing standards, including qualifications and other criteria applicable to the issuer (capitalisation, operating history, etc) and the securities sought to be listed (size, plan of distribution, etc).

7.5 Order Handling Rules

No order handling rules apply at this time.

7.6 Rise of Peer-to-Peer Trading Platforms

As far as is known, there are no regulations specifically governing the operation of peer-to-peer trading platforms.

7.7 Issues Relating to Best Execution of Customer Trades

Pursuant to the SRC and its implementing rules and regulations, broker-dealers, associated persons and salespeople of a broker-dealer (collectively referred to as “Registered Persons” in this context) are mandated to conduct business with due skill, care and diligence, in the best interests of clients and for the integrity of the market. A Registered Person, acting for or with a client, is required to always execute client orders on the best available terms in compliance with the Best Execution Rule.

As provided under the SRC, the Best Execution Rule provides that “in any transaction for or with a customer, a broker-dealer shall use reasonable diligence to ascertain the best market for the subject security and buy and sell in such market so that the result to the customer is as favourable as possible under prevailing market conditions”. Factors to be considered in deter-

mining whether reasonable diligence has been exercised include the price, the promptness of execution of the order, the size of the transaction, available markets, the settlement cycle and attendant transaction costs.

Furthermore, a Registered Person is mandated to avoid conflicts of interest; when they cannot be avoided, a Registered Person should ensure that clients are fairly treated and properly informed of such conflicts of interest. Under the prevailing regulations, where a Registered Person has a material interest in a transaction that may give rise to an actual or potential conflict of interest in relation to a transaction, such Registered Person shall neither advise on nor deal in relation to the transaction, unless the material interest or conflict has been properly disclosed to the client and all reasonable steps to ensure the fair treatment of the client have been taken.

7.8 Rules of Payment for Order Flow

As far as is known, there are no regulations specifically governing the procedures relating to payment for order flow. However, any arrangements of broker-dealers, associated persons and salesmen of a broker-dealer involving payment for order flow will need to comply, to the extent applicable, with the Best Execution Rule, as discussed above.

7.9 Market Integrity Principles

The Capital Markets Integrity Corporation (CMIC) is in charge of maintaining market integrity and minimising risk by ensuring that trading participants comply with the rules and code of conduct of CMIC and all related legislative and regulatory requirements.

8. HIGH-FREQUENCY AND ALGORITHMIC TRADING

8.1 Creation and Usage Regulations

As far as is known, the Philippine SEC has not issued any regulations specifically governing the creation and usage of high-frequency and algorithmic trading.

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

This is not applicable in the Philippines.

8.3 Regulatory Distinction between Funds and Dealers

This is not applicable in the Philippines.

8.4 Regulation of Programmers and Programming

This is not applicable in the Philippines.

9. FINANCIAL RESEARCH PLATFORMS

9.1 Registration

The operation of financial research platforms (and the delivery of financial information services through such platforms) may be considered a type of value-added service subject to NTC regulation under the Philippines' National Telecommunications Act. Value-added services regulated by the NTC include mobile applications or online platforms delivered to and/or accessed by users or subscribers, such as mobile banking, electronic payments, point-of-sale services, financial information services or similar applications.

In recent practice, however, the NTC has adopted the position that value-added services may be regulated or unregulated, with the former being subject to registration with, and licensing

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

by, the NTC. Under this view, value-added services may be considered regulated value-added services if they are offered for a fee, and if they are offered indiscriminately to the public.

9.2 Regulation of Unverified Information

The spreading of rumours, exaggerated, unwarranted or misleading statements or claims and other unverified information is regulated under Philippine libel and/or defamation laws, privacy laws and – where such information may be considered as market-sensitive – Philippine securities laws. Under such securities laws, the following applies:

- the circulation or dissemination of information that may affect the price of any security listed in an exchange is prohibited and may be considered as a manipulative market operation, which may result in the imposition of fines and penalties (including imprisonment of the directors, officers and other responsible persons); and
- as a rule, communications by securities professionals with the public must be based on the principles of fair dealing and good faith, and must provide a sound basis for evaluating facts regarding any particular security, industry or service offered.

9.3 Conversation Curation

As far as is known, there are no Philippine regulations that specifically provide for the manner in which conversations within or through the platform should be curated to avoid pump-and-dump schemes, the spread of inside information, or other types of unacceptable behaviour.

Considering, however, that the regulatory action will likely be undertaken (at the first instance) in respect of the owner or operator of the platform, it would be prudent for such owner or operator of such a platform to ensure that appropriate safeguards and control mechanisms are in place

to monitor – and, where warranted, to remedy – any improper communication or disclosure of information that is prohibited under pertinent regulations.

10. INSURTECH

10.1 Underwriting Processes

The insurtech industry in the Philippines is in its initial stages of development, and the extent of such development has been focused on increasing and improving distribution channels of insurance products through digital means and platforms. Other than regulations issued by the Insurance Commission regulating the use of e-commerce and digital platforms for product distribution and customer on-boarding, there are no regulations that specifically govern the underwriting process for insurtech industry participants in the Philippines.

10.2 Treatment of Different Types of Insurance

Philippine law generally classifies insurance into two types: life insurance and non-life insurance. Life insurance is defined as “insurance on human lives and insurance appertaining thereto or connected therewith”. Any other type of insurance – such as property, marine or fire insurance – is considered non-life insurance. There are separate rules and regulations for each type of insurance under Philippine law.

11. REGTECH

11.1 Regulation of Regtech Providers

The regtech industry in the Philippines is in its initial stages of development. As far as is known, there are no regulations specifically governing the delivery of regtech solutions or regulating regtech providers (other than related legislation regarding common areas of regulations for fin-

tech companies in general, such as data privacy compliance).

Given the partnership between the BSP and R2A, regulations more particularly focused on regtech and regtech providers are likely to be issued in the foreseeable future.

11.2 Contractual Terms to Assure Performance and Accuracy

This is not applicable in the Philippines.

12. BLOCKCHAIN

12.1 Use of Blockchain in the Financial Services Industry

The use of blockchain in the financial services industry (and in other industries, such as mining, transportation and logistics) is an emerging trend in the Philippines. To date, blockchain solutions have been proposed to be utilised (as part of a pilot programme) to facilitate domestic remittance transactions in a domestic remittance network established by a lead universal bank, the blockchain solutions provider and participating rural banks.

On the other hand, given the absence of specific blockchain-related regulations, legacy players looking to implement blockchain solutions have become understandably wary about the emergence of such regulations as the use of blockchain becomes more prevalent. Accordingly, certain legacy players have limited the adoption of blockchain solutions to incidental or collateral activities (eg, the recording of transfers or similar transactions) of the institution.

12.2 Local Regulators' Approach to Blockchain

As with most innovations introduced by the developing fintech industry in the Philippines, local regulators – including the Philippine SEC

and the BSP – have adopted a positive approach towards the application of blockchain solutions to key industries, such as financial services, mining, transportation and logistics. To date, however, other than the draft regulations on ICOs circulated by the Philippine SEC (which relate more to the regulation of ICOs in general) and the regulations on virtual asset providers, local regulators have yet to issue specific regulations on the use or adoption of blockchain technologies or blockchain solutions.

12.3 Classification of Blockchain Assets

Under the draft ICO regulations previously issued by the Philippine SEC, blockchain assets – in the form of “coins”, “tokens”, “virtual currency” (now “virtual assets”) or “utility tokens” – may be considered regulated financial instruments and thus classified as “security tokens”, to the extent that they may be considered securities under existing securities regulations. Under the SRC, securities are defined as “shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture evidenced by a certificate, contract, instruments, whether written or electronic in character”.

If the coin or token is considered a security token, the issuance, sale or offer of sale thereof to the public will be subject to Philippine SEC licensing, disclosure, registration and reporting requirements imposed under general securities laws and the ICO regulations.

12.4 Regulation of “Issuers” of Blockchain Assets

Under the draft ICO regulations previously issued by the Philippine SEC, to the extent that blockchain assets are considered securities (and designated as security tokens), issuers of security tokens are regulated similarly to issuers of traditional securities. The same regulations impose licensing, disclosure, registration and reporting

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

requirements on issuers of security tokens, particularly in respect of the issuance, sale or offer for sale of such security tokens.

The licensing, disclosure, registration and reporting requirements imposed on issuers proposing to undertake an ICO currently set forth a two-phase review process, with the first of these processes intended to determine the nature or status of the blockchain assets sought to be issued, sold or offered for sale to the public as a security or otherwise. In general, the regulation of an ICO closely follows those regulatory principles adopted by the Philippine SEC on the issue or offer of traditional securities, with the exception of certain regulations being particularly applicable to security tokens (eg, disclosures via white paper, and rules on permissible and prohibited advertising).

12.5 Regulation of Blockchain Asset Trading Platforms

The operation of blockchain asset trading platforms is currently regulated only by the BSP and only in respect of the conversion of such assets (denominated by the BSP as virtual assets, without regard to whether the asset is a coin, token or security token) to fiat currency and vice versa.

12.6 Regulation of Funds

As far as is known, there are no regulations (including under the draft ICO regulations) that apply specifically to funds that invest in blockchain assets.

12.7 Virtual Currencies

In the Philippines, virtual currencies are referred to as “virtual assets”. See **2.2 Regulatory Regime** for a discussion on virtual asset service providers.

12.8 Impact of Regulation on “DeFi” Platforms

As far as is known, there are no regulations (including under the draft ICO regulations) that define decentralised finance under Philippine law.

12.9 Non-fungible Tokens (NFTs)

At present, there is no specific regulatory framework for NFTs and NFT platforms. Nevertheless, depending on the features of the NFT or NFT platform, the same may be regulated under Philippine securities regulations or regulations on virtual asset service providers (please refer to the discussion in **2.2 Regulatory Regime**, which describes such providers).

13. OPEN BANKING

13.1 Regulation of Open Banking

To date, there are no regulations supporting or inhibiting open banking in the Philippines.

13.2 Concerns Raised by Open Banking

See **13.1 Regulation of Open Banking**.

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres

Quisumbing Torres is a member firm of Baker & McKenzie International and was established in 1963; having now advised firms in the Philippines and overseas for almost 60 years. The firm advises financial institutions, global digital leaders, technology incubators and start-ups – the entire value chain of the financial technology

industry – across a broad range of subsectors, including e-payment platforms, digital banking, blockchain and peer-to-peer lending. The firm addresses issues in market entry, product innovation and licensing, and can spot and mitigate regulatory, IP and contracting risks.

AUTHORS



Dennis Quintero is a partner in the corporate and commercial/M&A practice group of Quisumbing Torres. He heads the firm's financial institutions and energy, mining and

infrastructure industry groups. Dennis is a certified public accountant and was cited as one of IFLR Asia's Best Lawyers for 2019 to 2021. He has also been included in Asia Business Law Journal's Top 100 lawyers in the Philippines. Dennis advises clients in the fields of financial services regulations (insurance, banking, insurtech, fintech, electronic money, remittance and transfer services, payment systems) and EMI. He also advises clients on investment structuring, project development, project financing and M&A.



Divina Ilas-Panganiban is a partner in Quisumbing Torres' intellectual property, data and technology practice group, and co-heads the technology, media and telecommunications (TMT)

industry group. She is a member of Baker & McKenzie International's Asia-Pacific TMT Steering Committee and is a certified information privacy manager of the International Association of Privacy Professionals. Divina has advised various clients on regulatory and compliance matters, and has extensive experience in IP litigation cases, domain name disputes, data privacy, data breach and cybersecurity matters. She has been consistently ranked as a leading individual in TMT and intellectual property in the Asia-Pacific region by leading IP and TMT legal directories.

PHILIPPINES LAW AND PRACTICE

Contributed by: Dennis Quintero, Divina Ilas-Panganiban, Neonette Pascual and Kristina Navarro, Quisumbing Torres



Neonette Pascual is a senior associate in Quisumbing Torres' intellectual property, data and technology practice group and the technology, media and telecommunications (TMT)

industry group. She has over ten years' experience in handling matters involving contracts, incorporation, compliance, litigation and corporate housekeeping, and has acted as in-house counsel for a world-leading contact centre. Neonette also has over a decade's experience in handling matters on data privacy legislation in multiple jurisdictions, including the EU, US, Canada and SEA. Her practice focuses on data privacy, general IP advisory, IP litigation, trade marks and patent enforcement and maintenance. She is certified in information privacy technology, information privacy management and European data protection by the International Association of Privacy Professionals.



Kristina Navarro is an associate in Quisumbing Torres' corporate and commercial/M&A practice group and is a member of the financial institutions industry group and the fintech focus

group. She has seven years' experience in financial services, fintech, and loans and credit facilities. Kristina's practice focuses on matters related to banking and finance, including financial services, fintech, loans and credit facilities, and insurance. She has advised fintech and financial services companies on matters relating to financial regulations, licensing and compliance issues in relation to their Philippine operations.

Quisumbing Torres

16th Floor, One/NEO Building
26th Street corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City
Philippines 1634

Tel: +63 2 8819 4700
Fax: +63 2 8816 0083
Email: QTInfoDesk@quisumbingtorres.com
Web: [linkedin.com/company/quisumbingtorres](https://www.linkedin.com/company/quisumbingtorres)

Quisumbing Torres.

Member Firm of Baker & McKenzie International