



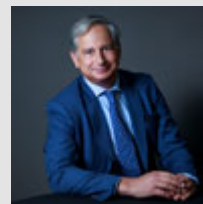
The Legal 500 & The In-House Lawyer

Hot Topic | Fintech

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Fintech - Trends and Developments in France

Overview of the current legal market in France and recent developments

French authorities and regulators have exhibited constant interest for FinTechs, which are driving technological innovation and providing additional financing sources. François Villeroy de Galhau, Governor of the French central bank and Chairman of the French banking regulator, said in 2017 that *“the digital revolution is creating challenges but also incredible opportunities that are just waiting to be seized, whether by FinTechs themselves, by the entire financial system – banks and insurers – or by the French and European economy as a whole.”* Regulations implemented in the last few years demonstrate French regulators’ commitment to quickly establish appropriate frameworks that foster the development of FinTech companies while ensuring investors’ protection.

The FinTech Forum chaired by Banque of France and AMF is a new body for consultation and dialogue with the French FinTech industry. Bringing together Fintechs, public authorities and supervisors, the forum will act as a venue for monitoring developments, engaging in dialogue and making proposals. The goal is to more effectively identify the challenges associated with the development of Fintechs in terms of opportunities and potential risks. The forum may be consulted on proposed changes to domestic or European regulations and on amendments to AMF or ACPR policy.

Paris hosts the Paris Fintech Forum, a annual conference which brings together all actors in the Fintech industry in Europe, (gathered 2,600+ attendees from 72 countries over 2 days in 2017).

Crowdfunding regulation

France implemented a regulatory framework for crowdfunding activities in 2014. The main objective was to ensure investors’ protection and information while allowing crowdfunding activities to develop. A central provision of this framework established a new exemption from public offering requirements (as set forth in the Prospectus Directive 2003/71/EC of 4 November 2003, etc.). Before that, crowdfunding fundraisings over EUR100,000 in equity or bonds required the drafting and dissemination of a prospectus.

As of 2014, crowdfunding transactions under EUR 1 million were exempt from the public offering requirements. This cap has since been raised to EUR 2.5 million. It was announced that this ceiling would be increased by EUR 8 million [\[1\]](#) at the end of the year. The 2014 reform also included a new exemption from the banking monopoly (i.e. the rule prohibiting entities other than licensed banks from granting interest-bearing loans) for crowd lending activities, allowing individuals to grant loans through crowdfunding platforms. However, this exemption from the banking monopoly is limited to individuals (i.e. not businesses) acting outside of their professional activities. Moreover, loans are limited to EUR 2,000 by lender and by project (EUR 5,000 if the loan is without interests), the loan maturity has to be less than seven years, and the borrower cannot borrow more than EUR 1 million per project.

Crowdfunding internet platforms have to register with the French securities regulator either as crowdfunding intermediaries (for donations and crowd lending platforms) or as crowdfunding investment advisers (for investment-based crowdfunding). They are not required to register with the French securities regulator if they already benefit from a licence as financial services providers (*prestataires de service d’investissement*). Crowdfunding intermediaries and crowdfunding investment advisers have to comply with specific regulatory requirements, including rules of good conduct, professional integrity and the abilities of their managers, professional insurance requirement, etc. Moreover, the regulatory framework details information that crowdfunding intermediaries are required to disseminate to their

members in order for them to be able to make informed investment decisions, and information they are required to request from their members to verify their identity.

Furthermore, an Ordinance dated 1st October 2016 amended the general regime of promissory notes and established a new crowdfunding regime for them. Promissory notes issued via a crowdfunding platform are referred to as “minibons”. Those minibons, since they are not financial instruments, are not subject to the prospectus requirements. They are also not subject to the French banking monopoly: the ordinance specifies that issuers of promissory notes are not violating the monopoly regarding reception of deposit funds from the public, and there is an exemption from the loan granting monopoly for individual investors subscribing to minibons outside of their professional activity and for legal entities which do not do so as a principal activity. Those minibons can be issued in a series (which is not the case for other promissory notes since the 2016 reform) by French corporate companies whose share capital is fully released. They are materialised by a registration certificate including specific mentions given to the investor. They bear a fixed interest rate, which is limited by the usury rate for the professionals’ overdrafts and is amortised at least quarterly in a constant total amount of principal and interest (so that bullet payments at maturity are prohibited). The maximum amount of minibons’ issuance for a single issuer over a rolling 12-month period is EUR 2.5 million.

Minibons are necessarily issued via internet platforms of a crowdfunding investment adviser or investment services providers. Rules of conducts for the intermediation of shares and bonds also apply in respect of minibons. These platforms may provide for subscription notices and hold a minibons’ register. The above-mentioned Ordinance specifies that the transfer of minibons can be done either by an assignment notified to the issuer, or by a distributed ledger technology (*dispositifs d’enregistrement électronique partagés*). Referred to as blockchain, pursuant to procedures to be set out in a future decree that has yet to be published.

Unlike the Financial Conduct Authority which has implemented so-called “regulatory sandbox”, i.e. experimental phases with lighter regulation for Fintech businesses, French Fintech do not benefit from similar preferential treatment. The French regulator’s approach is the so called proportionality approach, which consists of personalised assistance to Fintechs by providing comprehensive support concerning regulatory requirements, although the French government is holding consultations to consider whether to enact less stringent rules specifically applicable to Fintechs companies.

Distributed Ledger regulation

As mentioned above, French law recognizes the registration and transfer of *minibons* on a blockchain.

Moreover, an Ordinance dated 8 December 2017 provides for the amendment of article L. 211-3 of the Monetary and Financial Code in order to authorize the registration of financial securities which are not admitted to a central security deposit within the meaning of Regulation 909/2014/UE of 23 July 2014 (as transposed in article L. 420-1 of the Monetary and Financial Code as of 3 January 2018) on distributed ledgers (*dispositifs d’enregistrement électronique partagés*). This Ordinance provides that registration of financial securities on a distributed ledger shall be considered as a book entry (*inscription en compte*) and shall act as a proof of ownership.

This Ordinance provides that it shall come into force when the application decree mentioned in its article 2 is published, or at the latest on 1 July 2018. To this date, no application decree has been published.

Initial Coin Offerings (ICOs) regulation

As a general observation, it should be noted that regulators in France seem to have adopted an overall

moderately enthusiastic approach toward initial coin offerings. On 19 March 19 2018, the Minister of the Economy and Finance published an article [2] in which he stated that France has “every interest in becoming the first big financial center to offer an ad hoc legislative framework that allows companies launching an initial coin offering to prove their seriousness to potential investors”.

The French Financial Markets Authority (*Autorité des marchés financiers* or the “AMF”) issued a warning to investors on the risks related to initial coin offerings as part of its discussion paper on initial coin offerings released on 26 October 2017. However, the AMF is also exhibiting relative enthusiasm for initial coin offering. It has set up UNICORN, a program in the framework of which it has initiated discussions with token issuers. Moreover, in the summary of replies to this public consultation, published on 22 February 2018, the AMF states that “in the consultation document the AMF stated that since tokens (which the AMF is aware) do not appear to qualify as financial securities, they should consequently not be subject to French law on the public offering of financial securities. The replies the AMF has received essentially support this view as most respondents do not believe that tokens qualify as equity securities”.

The French Treasury recently proposed a new legislative framework for ICOs that has yet to be adopted. This draft regulation defines ICOs as public offerings of tokens, defined as intangible property representing, in numerical form, one or more rights that can be issued, registered, conserved or transferred using a shared electronic registration mechanism that facilitates the identification, directly or indirectly, of the owner of said property. The draft regulation specifies that the rules it sets forth do not apply to tokens that share the same characteristics as financial instruments. These token offerings will have to comply with the regulations applicable to public offerings of securities.

Under the proposed framework, token issuers established in France will have the opportunity to request an optional visa from the AMF. This visa would be non-mandatory. This regulatory strategy, based on an optional visa intended to act as a whitelist of reputable market participants, emphasis on non-mandatory provisions to foster professionalization and promote sound market practices while avoiding constraining frameworks which might deter innovation and lower the French market’s attractiveness.

Under the proposed framework, the AMF would:

- Verify that the issuer is organized under French law and registered in France;
- Examine the disclosure document submitted by the issuer as well as any promotional material published and circulated by it; the contents of the disclosure document and promotional material should be accurate, clear, not misleading and detailed as to the risks faced by investors when buying tokens;
- Verify that the issuer adopted adequate procedures to track and safeguard the funds raised in the ICO;
- Ensure that the activities of the issuer of the ICO conform to the content of the disclosure document and comply with the applicable regulation. In case of a violation, the AMF can compel the issuer to cease offering and selling tokens as well as terminate any promotional campaign. The AMF can also withdraw its approval.

A recent report [3] made by Jean-Pierre Landau in charge of a cryptocurrency mission by the Minister of Economy and Finance and former deputy governor of the *Banque de France* analyzes cryptocurrency adoption in France. The report went public July 5, 2018.

Payment services regulation

A recent legislative initiative has yet to be noted. Indeed, the Revised Payment Services Directive (PSD2) announcing the Open Banking and obliges banks to establish a access rights to the bank accounts in favour of Third Party Payment Services Providers (TPP) and to an increased diffusion of the information relating to the payment services made available to customers. The TPP include the recognition of new payment initiation services (provider triggers a credit transfer from a customer's bank account to a payee; it could be replaces card payments) and new account information services rules (providers get information from different accounts and offer personal finance monitoring and management services - other uses may emerge).

More precisely, online transactions often rely on third party facilitators to convey customer money to a merchant. With PSD2 implemented and the creation of PISPs, the merchant and the bank can communicate with each other directly. This makes for a more straight-forward customer journey and reduced costs for merchants.

Furthermore, PSD2 create and develop Account Information Service Providers. These provide customers with online consolidated information about their different payment accounts, which gives them a view of their finances allowing them to analyse their spending patterns, expenses and general financial needs.

At the European level, it is required to define an overall strategy for EU innovation in financial services. This strategy must cover all the issues raised by Fintech: from data protection to the fight against money laundering; from IT security to consumer protection; from financial stability to the social challenges of banking inclusion; from financial literacy to changes in jobs in the financial sector. It is a project currently being conducted by the European Commission.

Indeed European Commission is working an Action Plan on how to harness the opportunities presented by Fintech's services. European commission wants to build a Capital Markets Union and a true single market for consumer financial services.

The Commission aims to make EU rules more future-oriented and aligned with the rapid advance of technological development. Action Plan sets out 19* steps to support the uptake of new technologies, increase cybersecurity and the integrity of the financial system. At the end, the Commission will present a blueprint with best practices on regulatory sandboxes, based on guidance from European Supervisory Authorities.

In this context, the governor announced the creation of a working group bringing together banks, insurance companies and start-ups to evaluate the effects of artificial intelligence on the financial sector and whose initial work to be published by the end of the year. Indeed, François Villeroy de Galhau called banks to develop "as fast as possible" new secure interfaces to open access to bank data to Fintech.

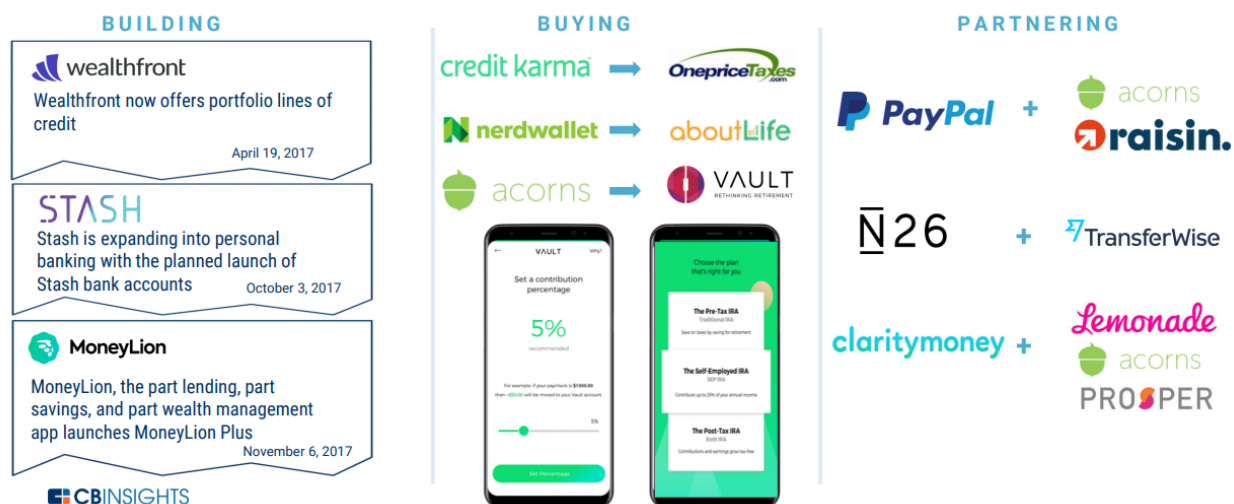
What significant trends exist in the fintech market presently? Are you seeing these just domestically or internationally as well?

There are three significant trends internationally: the growth of Fintech, the importance of the Blockchain technology applied to Fintech services and the solution offered by Fintech with respect to compliance.

A growth trend

Fintechs build, buy, and team up to grow. Many new Fintechs are established each year. New Fintechs

focused on personalization create new methodologies to deliver services more efficiently and holistically. Further, Fintechs buy others in order to acquire new activities or to improve/develop theirs. Finally, Fintechs or other existing institutions make partnerships.



Source: Fintech Trends to watch in 2018 CB insights

The trend of Distributed Ledger

There is no doubt banks are paying attention to blockchain and distributed ledger technology particularly in trade finance, with 2017 topping the year of production. Twenty percent of trade finance will incorporate blockchain by 2020. As a result, blockchain could quickly become mainstream within the financial industry in the coming years.

Investment funds are also increasingly interested in blockchain technologies, in particular for post-market activities such as bookkeeping, settlement and delivery, account management and clearing.

Blockchain solutions are at the core of ongoing discussions. French national assembly (*Assemblée Nationale*) in February 2018 set up a joint information mission on blockchains. Its role is to carry out work on topics that may concern all of the Parliament. In this context, hearings are conducted and trips in France and abroad can take place. Reports are produced, which gives rise to a debate without a vote in the meeting. However, legislative perspectives (proposal or draft law, decree) can be envisaged.

The opportunities associated with blockchain are presented in an in-depth report by the Blockchain Working Group of Paris Europlace entitled "*Impact of distributed ledgers and blockchain technology on market activities [4]*". The Paris EUROPLACE white paper on the impacts of distributed ledgers and blockchain technology on market activities gives the following main recommendations:

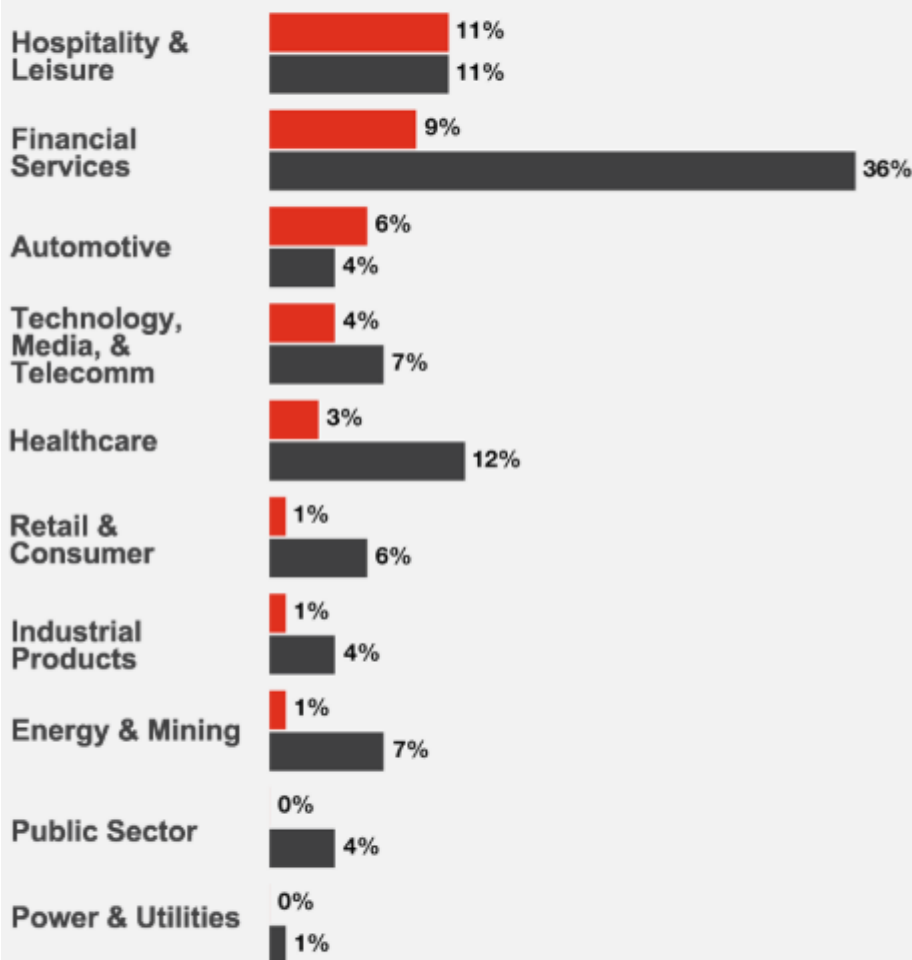
- Regarding asset management where France is recognised as a world leader, the white paper shows that blockchain may bring interesting responses to asset management companies, which have for long time communicated the need not only to better know their final investors but also to better control the distribution of units of collective investments. The use of blockchain, which implies significant changes to the form of shares and units of collective investment vehicles in France, could entice a switch from bearer to registered securities;

- Regarding non-listed securities law, the white paper considers that adapting the existing law is sufficient to apply it to the use of the blockchain technology.

Blockchain investment by industry

Which technologies are you making substantial investments in?

■ Today ■ In 3 years



Source: PwC, 2017 Global Digital IQ® Survey

Bases: Automotive: 72; Energy & Mining: 135; Financial Services: 332; Healthcare: 237; Hospitality & Leisure: 75; Industrial Products: 375; Power & Utilities: 131; Public Sector: 156; Retail & Consumer: 217; Technology, Media & Telecommunications: 433

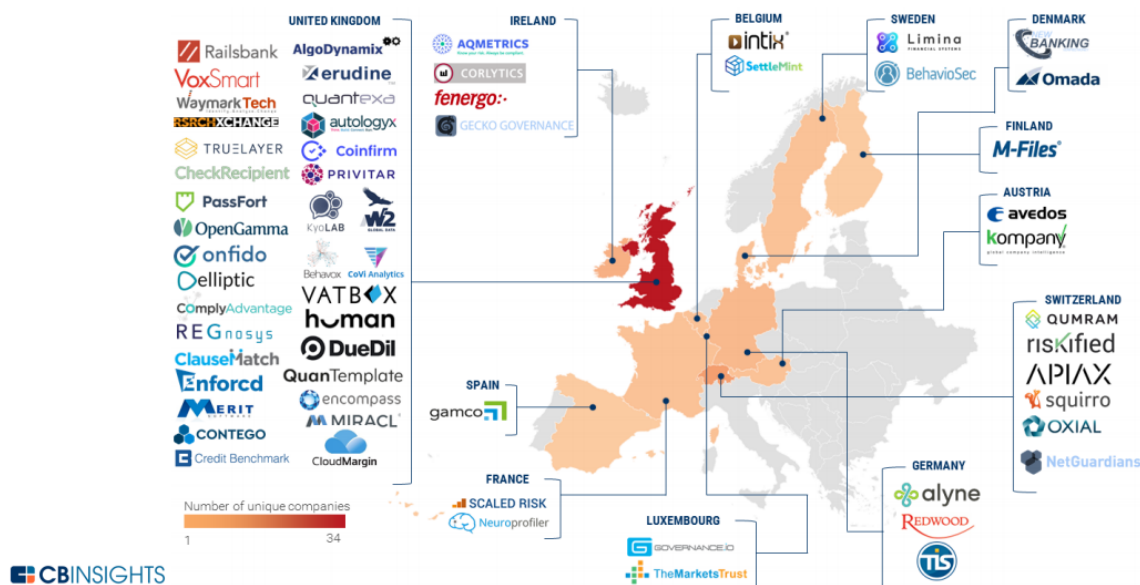
PwC | pwc.com/nextintech

The advantages associated with the implementation of blockchain solutions are usually summed up in terms of:

- Transparency offered to parties ;
- Reduction of cost (such as the cost of Letters Of Credit transactions since there isn't a need for a third party verification) ;
- Reduction of the time it takes to settle every transaction when an intermediary is not involved ;
- The possibility of self-executing contracts by Smart contracts. Data is monitored and recorded on the smart contract with full transparency and does not require manual processing, nor authentication through intermediaries. As results, it speeds up the process from beginning to end.

The Regtech trend

Fintechs are taking dynamic approaches to compliance (Identity/verification; fraud detection; software for cryptocurrency regulation) accelerated by recent and numerous (MiFID2, AMLD4, CRD, EMIR, UCITS5, FRTB, FATCA, CRS, PSD2 etc.) regulations.



Source: Fintech Trends to watch in 2018 CB insights

As PSD2 comes into force, we may see an interesting shift in the dynamic between FinTechs and corporates. The new directive will increase competition in the European market, which could accelerate the rate at which banks and other corporations snatch up FinTech in order to stay competitive. For FinTechs looking to work with or be acquired by large organisations, the need to be compliant under PSD2 and to have the right cover in place is all the more pertinent.

Those trends are international and Fintechs continue to keep growing and increasing their business. We see China leading the Fintech revolution with Alipay and WeChat pay dominating the way people pay for products.

What are the three biggest challenges to practising fintech in France at the moment?

The biggest challenges for French Fintechs are low use (including lack of notoriety) of services offered by Fintech, users' reluctance regarding security issues, and the various asperities (lack of harmonization, lack of regulation or legal answers, etc.) in the regulatory framework.

Low use of French/lack of notoriety

A study [5] shows services offered by Fintech, account aggregation is the most used by the French with only 9% of users. Services related to savings (crowdfunding, financial planning, automated advice) and connected objects are currently used only up to 4 to 6%. This is partly explained by the low notoriety of Fintechs vis-à-vis the general public. Indeed, only 1 of 4 people on average are familiar with these innovative financial services. The development opportunities are however considerable in France. Once these services have been explained to the French, the interest it expresses for the use of these innovations is significant: 18% declare themselves interested in the innovation that receives the least interest (P2P payments via social networks) whereas the most popular products - connected insurers and account aggregators - would attract up to 45% of French people.

As a result, many Fintech face difficulties to achieve profitability even though they are constantly innovating and developing cutting-edge technologies. This is why start-ups are frequently teaming up with large financial institutions in order to ensure they have the time and resources required to develop their technology.

Lack of confidence/IT security

The same study shows that there are two major hurdles to these connected services:

- Fear of tracking / tracing, feeling of intrusion
- The fear of being "penalized" by this device, faced with non-virtuous behaviour for example in connected insurance services.

It could be an important growth opportunity for Fintech. Indeed, French potential users need information about these security issues. In accordance with results mentioned above, French potential users would be inclined to use services much more if the security concerns were addressed in a satisfying way. Ensuring the resilience of IT systems as well as the protection of users against risk of theft and piracy is therefore crucial. Amongst security issues faced by Fintech companies, the following can be mentioned :

- denial of service attacks,
- Sybil attacks,
- mystification,
- malware attacks,
- consensus-based attacks.

Is it essential for FinTechs to address those issues, as a single security breach can damage the reputation of the whole industry. As an example, the Mt. Gox breach of 2014 was heavily mediatised and amplified users' concerns about the safety of their crypto-currencies accounts.

Regulatory uncertainty

According to a study conducted by the European Banking Authority, out of 282 Fintechs in 22 countries of the European Union, there is a significant lack of uniformity in the regulation applicable to Fintechs: 33% of these Fintechs are not subject to any regulatory regime, while 8% escape all regulations because they propose innovative technologies (eg. biometrics) that are not yet regulated.

Moreover, as regulators and authorities are still figuring out the appropriate regulations (e.g. on ICOs or crypto-asset trading platforms, which most jurisdictions do not regulate as of now but plan to in the near future). As a result, FinTechs are facing extreme regulatory uncertainty, as future regulation may well impose stringent limitations that could force them to adapt their business model. The lack of a stable framework is inherent to innovative activities, but nonetheless hampers Fintechs activities.

Practical initiatives in France

Among the initiatives to overcome this uncertainty, it should be noted that *Caisse des Dépôts* is launching an innovation laboratory on Blockchain technology. The aim is to pool coordinate methods and to evaluate the potential uses of this technology. It will also be necessary to set the terms of the ethical, regulatory or normative debates.

The *Banque de France* inaugurated the new premises of its Lab, headed by Thierry Bedoin. The Lab aims to assist the *Banque de France* with its transformation, in particular its digital transformation, and to test and develop solutions that draw on innovative technologies, such as artificial intelligence and blockchain.

Following the government's initiative to foster investments in fintechs, Paris&Co and its corporate partners (Société Générale, NewAlpha Asset Management, Crédit Municipal de Paris, Exton Consulting, AG2R La Mondiale and Mastercard) have been working together set up a Fintech incubator named Swave.

Others incubators dedicated to Fintech exist in Paris in Regions (more than 370 startup incubators in France, including 208 in Paris, notably Station F, the world's biggest start up campus).

The French government as created the so called "French Tech Visa", a simplified, fast-track procedure for three types of international tech talent to obtain a residence permit known as the "Passeport Talent"[6]. The French Tech Visa is open to three categories of tech talent - startup founders, employees, and investors - and allows them to live and work in France. It is valid for four years, on a renewable basis. It is extended to immediate family members: spouses also receive residence permits authorizing them to live and work in France. Dependent children are authorized to live in France as well. No additional work permit is required.

We can note the FintechLab initiative, an observatory focusing on the impact of new financial technology in the financial services industry. The Lab sees itself as a think tank for experts and professionals to reflect upon the political, economic, technological, legal and social impact of FinTech.[7]

How does Fintech fit into the firm as a whole? Is it easy to collaborate with other teams?

The Fintech team grew organically over the years within the Banking and Financial Services department. It is not structured as a separate team but rather included in the Banking and Finance department.

All banking and finance lawyers are encouraged to:

- monitor regulatory changes related to Fintechs,
- improve their understanding of technological issues (such as understanding how a distributed ledger work),
- deepen their knowledge of the Fintech industry (by monitoring new start-ups, attending industry events, etc.)

Advising Fintechs requires not only to have a broad understanding of financial regulations, but also to understand the technological challenges faced by start-ups in this area. As a result, our goal is not to develop an independent Fintech practice, but to encourage our Banking and Finance lawyers to develop an interest and an expertise in technological innovations in the financial industry.

What advice would you give to the next generation of Fintech lawyers?

The main advice would be to deepen their understanding of the technological angles. While any lawyers can understand the regulatory trends relating to Fintechs, most of them have little to no understanding of the technological changes that underline innovation in the financial services industry. Understanding distributed ledger technologies, decentralized applications, crypto-assets and other technological innovations is essential to advice Fintech executives. Not only does it allow lawyers to speak the same language as their client (as Fintech professional often use specific terminology), it allows them to provide pragmatic and goal-oriented legal advice that fits their needs. For example, lawyers that are able to read code will be in a better position to advice clients in relation with so-called “smart contracts”.

What are your predictions for Fintech in France over the next five years?

The French FinTechs ecosystem has strengthened in the last years and should attract more talents and investments in the future, says a survey by Exton Consulting. Conducted on behalf of centre of excellence Finance Innovation, the study draws an overview of FinTech in France.

French FinTech firms raised significant funding in 2016. SME loan crowdfunding platform Lendix raised €12 million, KissKissBankBank €5.3 million, Ulule €5 million, Tiller €4 million and Wynd €30 million. Compte Nickel has developed a bankless, no-overdraft account that takes five minutes to open at a newsagents; the start-up, valued at €200 million, was acquired by BNP Paribas in 2017. Furthermore, more than 380 projects presented by start-ups, SMEs and large undertakings have already received the



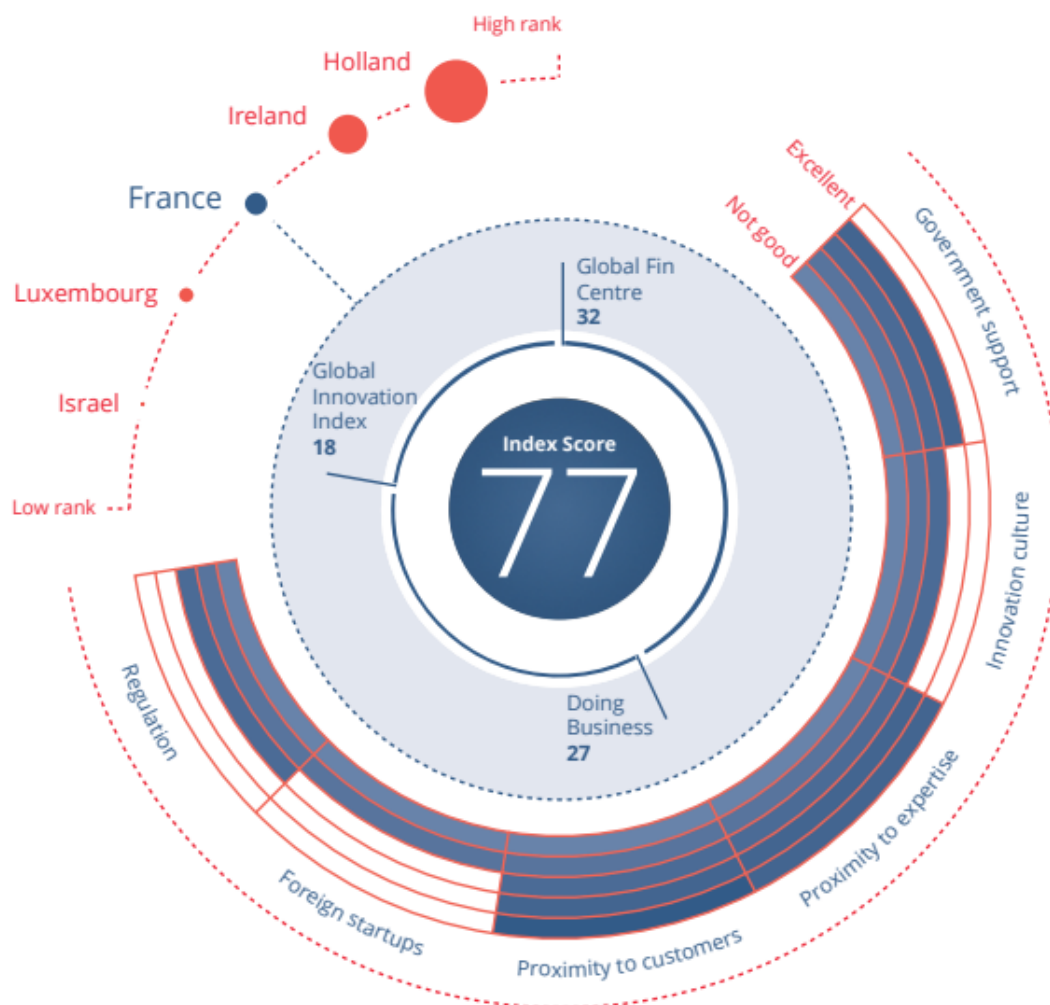
“excellence label” delivered by Finance Innovation.

According to a study conducted by EY [8], more than €2 billion have been raised in venture capital by start-ups in France in 2016.

This enthusiasm of start-ups can partly be explained by French regulations. France offering incentives in an effort to attract Fintech start-ups. Indeed, France is a country where there are more than 80 business incubators (private and public) and “accelerators” (business development program that supports founders and helps them turn their ideas into successful businesses). Among the most recognized, we can quote KAMET by AXA, 50 PARTNERS by le Loft, TRUFFLE FINTECH INCUBATOR by TRUFFLE CAPITAL, FINTECH & CORPORATE L’ATELIER by BNP PARIBAS etc.

It should be added that the French policy seduces Fintech. More precisely, Fintech are charmed by Emmanuel Macron. The nascent industry, ranging from mobile payment apps to “cryptocurrencies” like bitcoin, is seen by governments and business alike as crucial to the future of financial services and of vital importance, therefore, to economic growth.

As previously announced, France has “comprehensive regulations” with respect to FinTech, with clearly defined rules for companies looking to scale up. FinTech can rely on a strong governmental and ministerial support. Moreover, Paris is home to a high concentration of financial institutions and asset managers. There is strong infrastructure established in payments, insurance and telecoms with large pools of talent available.



Source: Deloitte report: Connecting Global FinTech: Interim Hub Review 2017

This study confirms the government support and revealed France is one of the countries with the highest score on this issue.

The same study revealed also a good grade in the category named "Proximity to customers". According to the definition mentioned in the study, France has a potential of customers at the better level. The study mentioned above (question 2) shows that the lack of notoriety of Fintech is the reason of the low utilisation. Investors must be aware of this and must overcome this obstacle from the beginning.

Footnotes

[1] Schedule: <https://www.numerique.gouv.fr/actions-startups/elements-de-portee-sectorielle/fintechs>

[2] Available in French at:
<https://www.numerama.com/politique/336943-tribune-cryptoactifs-blockchain-ico-comment-la-france-veut-rester-a-la-pointe-par-bruno-le-maire.html>

[3] https://www.mindfintech.fr/files/documents/Etudes/Landau_rapport_cryptomonnaies_2018.pdf

[4] <https://www.paris-europlace.com/en/file/2995/download?token=KZojpYde>

[5] Source: Survey from Deloitte Conseil et Harris Interactive 2015 ; Survey from Deloitte Usages Mobiles 2015 - A game of Phone

[6] <https://visa.lafrenchtech.com/>

[7] <http://fintechlab.ca/?lang=en>

[8] Source : Survey from EY, 2016 :
<https://www.ey.com/Publication/vwLUAssets/ey-global-venture-capital-trends-2015/%24FILE/ey-global-venture-capital-trends-2015.pdf>