

INTERNATIONAL **BANKING** REVIEW

2026/27



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FOREWORD

Banks' exposures to nonbanks (the “boomerang” back to banks)

WORLD BANK



BIO

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Banks' exposures to nonbanks (the “boomerang” back to banks)



The banking story today is increasingly written beyond banks' balance sheets—and tested in how shocks travel across the system. The financial conditions remain vulnerable, and banks are asked to perform two tasks simultaneously: reinforce resilience and risk governance while keeping credit flowing to firms, especially SMEs and households that rely on finance to invest and sustain jobs and growth. The share of intermediation is increasingly through nonbanks, diversifying sources of finance but also potentially different dynamics of liquidity and leverage and less consistent transparency. Yet banks are not bystanders in this

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Banks remain exposed to nonbanks, creating a ‘boomerang’ risk of spillovers to the real economy.

evolution and continue to be exposed to nonbanks through funding, market-making, and contractual linkages, creating a “boomerang” risk of potential spillovers from nonbanks to banks and the real economy.

By “banks’ exposure to nonbanks,” I mean the ways banks remain financially tied to lenders and investors outside the

traditional banking system, even when those activities sit beyond the traditional banking regulatory perimeter such as hedge funds, private equity and private credit funds. In practice, this is visible in committed credit lines and liquidity backstops to funds and finance companies, prime brokerage and margin lending to leveraged investors, and derivatives and collateral relationships that can expand quickly in volatile markets. It matters because these connections can amplify stress across the financial system and, when confidence turns, tighten credit and disrupt market functioning—ultimately affecting firms, households, and jobs.

There are three key factors that have brought bank-nonbank exposures to the forefront. First, nonbank financial intermediation has continued to grow in scale and the relationship between banks and nonbanks in terms of funding and markets has continued to grow. Second, there have been vulnerabilities in the nonbank financial sector. For instance, there have been concerns about leverage and liquidity mismatches. Third, authorities and market participants still face material data and visibility gaps across entities, instruments, and jurisdictions, making risk concentrations harder to identify in real time. These trends are affecting incentives and risk concentrations across banks and markets in ways that will test resiliency when it is needed most.

The core transmission channel is a liquidity-and-collateral shock that spreads through tightly connected balance sheets and markets. It first hits bank balance sheets through higher counterparty risk, rapid valuation changes, and sudden liquidity demands as contingent commitments are drawn and collateral needs rise. Stress then shows up in funding and confidence: haircuts increase, spreads widen, and rollover shortens as margining and collateral requirements become procyclical under volatility. Finally, the feedback reaches the real economy as banks protect liquidity and capital by tightening credit conditions, pulling back market intermediation, and repricing risk. When volatility spikes and market liquidity thins, these dynamics can shift quickly from contained pressures to system-wide stress.

We have already seen how non-banking strains can become bank relevant.

In India, stress in the Non-Banking Financial Company (NBFC) sector emerged after the unexpected defaults of Infrastructure Leasing & Financial Services (IL&FS) (September 2018) and Dewan Housing Finance Corporation Limited (DHFL) (June 2019) and quickly tightened funding conditions across the segment. As pressures mounted, the IMF noted that bank exposures to NBFCs had risen significantly, with bank lending to the sector more than doubling—leaving NBFCs accounting for almost 9% of banking system loans, equivalent to more than 60% of Tier 1 capital. This is a classic case of direct transmission effects, with pressures in the NBFC liquidity and asset quality directly impacting bank balance sheets and risk capacity, tightening overall financial conditions rather than insulating the banking system.

When bank–nonbank linkages amplify stress, the first casualty is often the flow of finance to the real economy.

Adverse shocks can translate into tighter financial conditions, risk premia increasing, and loan growth slowing down, pressures that are felt most quickly by SMEs and households that depend on bank credit and functioning markets. Disruptions in core markets can amplify this tightening, as these markets are key to overall economic financing conditions.

What is needed now is a targeted resilience agenda across the bank–nonbank boundary.

First, there should be enhanced system-wide monitoring to be able to pinpoint concentrated linkages and vulnerabilities, addressing fragmented visibility that limits a consolidated view of risks. Second, policy should reduce procyclicality by improving nonbank market participants' liquidity preparedness for margin and collateral calls—through stronger liquidity risk management, governance, stress testing, and collateral management practices. Third, leverage-driven fragilities in nonbank intermediation, particularly those that have an impact on core markets, should be identified and met with appropriate, proportionate measures. Finally, there should be risk governance and stress tests conducted by banks that consider plausible scenarios of nonbank stress and market dysfunction.

What is clear is that the system has changed: risk does not respect institutional labels, and shocks rarely stay contained where they begin. As banking and market-based finance become more intertwined, the challenge is to ensure that confidence is maintained even when strain occurs beyond traditional perimeter. This requires coherence across institutions and jurisdictions, ensuring strain is addressed quickly and before it becomes systemic and undermines stability.

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When bank–nonbank linkages amplify stress, the first casualty is often the flow of finance to the real economy.

BAHRAIN

Regulatory Integration and Financial Innovation: The Evolution of Bahrain's Banking Sector

HASSAN RADHI & ASSOCIATES



BIO

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Bahrain has long positioned itself as a regional financial gateway, leveraging its strategic location, progressive regulatory architecture and open-market policies to cultivate a sophisticated and internationally connected financial services sector. Over several decades, the Kingdom has developed a diversified banking ecosystem that supports domestic economic activity while facilitating cross-border financial flows across the Gulf and beyond.

Financial Services Industry

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The largest non-oil contributor to Bahrain's economy is the financial services industry.

The largest non-oil contributor to Bahrain's economy is the financial services industry. Bahrain's financial system is predominantly bank-centric, with both conventional and Islamic institutions forming the core of the sector. Banking represents more than 85% of total financial assets in the Kingdom, making it the primary driver of

financial intermediation and capital allocation.

As of September 2020, Bahrain was home to 376 licensed financial institutions. These included 31 retail banks, 62 wholesale banks, 17 branches of foreign banks and 8 representative offices. The wider financial ecosystem also comprised 34 insurance companies, 53 investment business firms and 86 specialized licensees, reflecting the breadth and sophistication of the sector.

The banking industry has been central to Bahrain's development as a regional financial centre. By July 2020, total banking sector assets exceeded US\$212 billion, a figure more than five times the Kingdom's annual GDP. This scale underscores the systemic importance of the sector within the domestic economy and its broader regional footprint.

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HASSAN RADHI & ASSOCIATES

Bahrain's growth as a financial hub has been underpinned by several structural advantages. These include an open and liberalised market environment, prudent macroeconomic and fiscal management, a regulatory regime aligned with international standards, and a skilled workforce drawn from both local and expatriate talent pools. Together, these factors have enhanced investor confidence and attracted a significant number of foreign banking institutions to establish operations in the Kingdom.

Islamic Finance

Bahrain occupies a prominent position in the global Islamic finance landscape and hosts one of the highest concentrations of Islamic financial institutions in the Middle East. The Kingdom also serves as the headquarters for several internationally recognised Islamic finance standard-setting bodies, such as Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), International Islamic Financial Market (IIFM) and Islamic International Rating Agency (IIRA), reinforcing its institutional influence in the sector.

Islamic financial services in Bahrain are delivered through a diverse range of institutions. These include six Islamic retail banks, six Islamic wholesale banks, two wholesale branches of foreign Islamic banks, nine Islamic windows operated by conventional banks, five Takaful companies, one Re-Takaful operator and one Islamic financing company. Bahrain has also established itself as a leading jurisdiction for the issuance of Sukuk, encompassing both short-term government instruments and longer-term sovereign and corporate issuances.

Moreover, the Central Bank of Bahrain (CBB) has played a proactive role in facilitating and structuring these instruments. The Kingdom of Bahrain's monetary and financial stability is upheld by the CBB, the sole regulator of Bahrain's financial sector.

The CBB is entrusted with safeguarding monetary and financial stability and acts as the unified regulator of Bahrain's financial services industry, including banks, insurance companies, investment firms and other licensed financial institutions. Beyond its supervisory mandate, the CBB has also played a central role in developing domestic financial markets, including supporting the issuance and regulatory structuring of conventional and Islamic debt instruments, thereby reinforcing liquidity management and market confidence within the banking sector.

The expansion of Islamic banking in Bahrain has been substantial over the past two decades. Total assets in the Islamic banking segment grew from approximately US\$1.9 billion in 2000 to US\$61.7 billion by June 2024, representing an increase of over 32 times. Over the same period, Islamic banks' share of total banking assets rose from 1.8% to 25.3%. This growth trajectory reflects not only increasing market demand, but also regulatory and institutional support.

A key enabler of this development has been the CBB's establishment of a distinct regulatory framework tailored specifically to Islamic finance. The Islamic Banking rulebook addresses Shari'ah governance, licensing standards, capital adequacy requirements, risk management frameworks, conduct of business, financial crime controls and disclosure requirements. These frameworks were among the first comprehensive regulatory regimes for Islamic finance in the region.

To further strengthen industry capability and promote market development, the CBB collaborated with industry participants to establish the Waqf Fund. Since 2006, the Fund has supported training, education and research initiatives in Islamic finance. Its programmes are designed to enhance expertise across different levels of institutions, including boards of directors, senior management, Shari'ah scholars and operational staff.

Collectively, these regulatory, institutional and market developments have consolidated Bahrain's position as a leading and mature Islamic finance jurisdiction, embedding Shari'ah-compliant banking as a core and systemically significant component of the Kingdom's overall banking environment.

The Benefit Company

The Kingdom of Bahrain has also accelerated its digital transformation agenda within the financial sector, strengthening payment infrastructure and advancing electronic settlement systems to support a modern, technology-driven banking environment. The Benefit Company serves as the conduit for all electronic financial transactions throughout Bahrain and plays a foundational role in the Kingdom's banking system. Through its Electronic Funds Transfer System (EFTS), Benefit facilitates regulated interbank transfers, instant payments and electronic bill settlement services across licensed banks and digital platforms. The EFTS integrates Bahrain's principal payment channels, including Fawri (real-time transfers), Fawri+ (instant account-to-account payments) and Fawateer (bill payment services), operating through both bank platforms and the BenefitPay mobile application.

In 2025, the EFTS processed 494 million transactions, reflecting a growth of 10.7% in comparison to the previous year. The total transaction value reached BD 37.5 billion, marking a 12.6% increase compared to the previous year. These figures demonstrate the expanding reliance of retail, corporate and SME customers on electronic banking channels and the continued shift toward digital settlement infrastructure within the domestic financial system.

A substantial proportion of system activity was driven by the BenefitPay platform, which recorded 466 million transactions across all EFTS services, valued at BD 10.2 billion. This represents annual growth of 10.6% in volume and 9.5% in value, underscoring sustained adoption of mobile-based banking services.

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The expansion of Islamic banking in Bahrain has been substantial over the past two decades.

Beyond payments, Benefit supports core banking compliance and risk infrastructure. The electronic Know Your Customer platform processed approximately 1.1 million verification transactions in 2025, reflecting strong growth in digital onboarding across financial institutions. In parallel, the Bahrain Credit Reference Bureau, operated by Benefit, issued over 541,000 credit reports, reinforcing centralized credit risk assessment within the lending market. Furthermore, Benefit also supported implementation of the Wage Protection System in partnership with the Labour Market Regulatory Authority, embedding regulated banking channels into salary disbursement processes. This initiative enhanced transparency, compliance monitoring and financial inclusion.

Overall, Benefit functions as a critical payment and data

infrastructure utility underpinning Bahrain's banking sector, bolstering regulatory compliance and the continued digital transformation of financial services.

Open Banking and Digital Payments

In addition, the adoption of the Bahrain Open Banking Framework (OBF), in conjunction with the ongoing development

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 Beyond payments, Benefit supports core banking compliance and risk infrastructure.”

of Bahrain's digital payments infrastructure is another distinctive aspect of the Kingdom's recent developments. Bahrain was among the first countries in the region to embrace a regulated approach to data driven financial services, with the introduction of Open Banking rules in 2018, and the subsequent launch of OBF in 2020. The Kingdom's strategy is unique as it incorporates payments innovation and open banking into a single legislative framework. The framework reflects a legal landscape that modernizes financial services through safe data exchange, while upholding market integrity, consumer protection, and regulatory control.

Moreover, in Bahrain, banks are mandated to provide third party providers with standardized and safe access to customer data, core principles of Open Banking. FinTech services like account aggregation, payment initiation, and data enabled financial products, are a result of Open Banking, while maintaining strict guidelines for accountability, data security, and consumer consent. Furthermore, OBF launched an “account information service,” which gives consumers access to all bank account details using a single platform, as well as “payment initiation service,” which permits authorized third parties to begin the initiation of payments on behalf of clients, facilitating smooth transfers between various client accounts, using a mobile application.

As a result, Bahrain has strategically aligned banking innovation with regulatory rigor, enabling the development of scalable and customer-centric financial services within a coherent supervisory framework.

The Crypto-Asset Module

Moreover, the introduction of the Crypto-Asset Module (CRA Module) into Volume 6 of the CBB Rulebook in 2019 represents a significant development within Bahrain's banking and financial regulatory framework. The CRA Module establishes licensing, governance, risk management, customer due diligence, and AML/ CFT requirements for crypto-asset service providers. This ensures that virtual asset activities operate within defined prudential and supervisory parameters, thereby mitigating systemic, operational, and financial crime risks that could otherwise affect the banking sector.

From a banking perspective, the framework enhances regulatory certainty for both traditional financial institutions and FinTech firms, facilitating controlled interaction between licensed banks and crypto-asset businesses. By embedding crypto regulation within the CBB Rulebook, Bahrain has reinforced financial stability while enabling innovation, positioning the Kingdom as a jurisdiction that supports digital finance development within a structured and credible banking regulatory environment.

Environmental, Social and Governance (ESG)

Environmental, Social and Governance (ESG) considerations are set to play a defining role in the next phase of banking development in Bahrain. On 5 November 2023, the CBB issued dedicated Environmental, Social and Governance (ESG) Requirements applicable to all listed companies, banks, financing companies, insurance firms and Category 1 and 2 investment firms.

The framework forms part of the CBB's broader objective of strengthening transparency, corporate governance and risk management within the financial sector. By introducing standardised ESG reporting requirements, the CBB has aligned Bahrain's regulatory environment with evolving international sustainability standards while reinforcing market discipline and investor confidence.

The module also reflects Bahrain's commitment to sustainable development under the Bahrain Economic Vision 2030 and the UN Sustainable Development Goals, encouraging regulated entities to integrate ESG considerations into governance structures and risk frameworks rather than treating them as purely voluntary disclosures. Accordingly, the introduction of the ESG Requirements represents a significant step in embedding sustainability, risk awareness, and enhanced disclosure standards within Bahrain's banking sector.

To conclude, Bahrain's banking sector reflects a model of deliberate regulatory integration, where innovation is consistently embedded within a unified supervisory framework under the Central Bank of Bahrain. Across Islamic finance, digital payments, open banking, crypto-asset regulation and ESG disclosure, the Kingdom has balanced financial modernisation with prudential discipline. In an increasingly competitive and digitised global environment, The Kingdom of Bahrain's strength lies in regulatory coherence, institutional maturity and its role as a credible cross-border financial hub within the region and the wider international banking system.

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BOLIVIA

State Intervention and Financial Reform in Bolivia: Towards a More Efficient Credit System

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State Intervention and Financial Reform in Bolivia: Towards a More Efficient Credit System



I. Bolivia's Financial System – Regulatory Framework

According to the Political Constitution of the State (the “Constitution”)¹, the Bolivian financial system is defined as an exclusive competence of the central government, declaring financial intermediation and savings management as activities of public interest that require prior state authorization. Under the principles of social function and equity established in Article 330 of the Constitution, the State regulates the financial system to guarantee

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The State regulates the financial system to guarantee equal opportunities, prioritizing access to services for micro and small enterprises, artisans, cooperatives, and community organizations.

equal opportunities, prioritizing access to services for micro and small enterprises, artisans, cooperatives, and community organizations, as well as promoting productive investment, although subordinating their autonomy to the public interest and regulation by the central government. According to Article 332 of the Constitution², supervision

falls upon a national regulatory body (Autoridad de Supervisión del Sistema Financiero – “ASFI”), whose highest authority (its Executive Director) is appointed by the President of the State from a shortlist submitted by the Legislative Assembly, thus ensuring control and transparency in the sector. However, in recent years, ASFI’s Executive Director has been directly appointed by a Supreme Resolution signed by the President of the State, on an interim basis, without the shortlist from the Legislative Assembly. This has created certain doubts as to the political independence of the Executive Director from the President, appointed in previous administrations.

Financial institutions’ main obligations are bound by their exclusive authorizations, as they cannot engage in intermediation or savings management activities without prior state permission, and liability in the event of insolvency, which requires them to make mandatory contributions to a financial restructuring fund, releasing the State and the Central Bank from any responsibility for their private debts. The regulations strictly prohibit the Central Bank of Bolivia or public institutions from assuming debts of private banks. They are also subject to a portfolio prioritization mandated by the State, which requires them to focus their services on strategic sectors such as micro and small enterprises, handicrafts, and community organizations. This provision underpins subsequent state interventions regarding maximum interest rates and loan portfolio allocation, as will be further discussed below, in support of the country’s economic and social development policies.

In this context, pursuant to Article 66 of the Financial Services Law No. 393³, which empowers the Executive Branch to impose sectoral loan allocation quotas without requiring legislative approval, granting flexibility to periodically adjust the percentages according to government priorities may be implemented. Paragraph II of said Article 66 stipulates that ASFI may, exceptionally, determine maximum loan portfolio levels to safeguard systemic stability, although this attribution has not been exercised in practice.

On the other hand, Article 67 of Law No. 393⁴, establishes a dual mandate: (i) financing social housing to meet the demand of lower-income sectors, and (ii) productive credit aimed at smaller economic units, traditionally excluded from the formal banking system. Prioritization reflects objectives of distributive equity and promotion and of job-generating activities, in line with the constitutional principles of equal opportunities and equitable redistribution.

1. Political Constitution of the State 2009 (Bolivia).

2. Political Constitution of the State 2009 (Bolivia), art 332.

3. Law No 393 on Financial Services 2013 (Bolivia), art 66.

4. Law No 393 on Financial Services 2013 (Bolivia), art 67.

II. Interest Rate Regime - Portfolio Percentages.

Supreme Decree No. 2055⁵ of July 9, 2014, constitutes the cornerstone of the interest rate control regime in Bolivia. This decree establishes a dual objective: (i) to determine the minimum interest rates for public deposits in savings and fixed-term accounts, and (ii) to establish the regime of maximum active interest rates for financing destined to the productive sector. On its part, Supreme Decree No. 4408 of December 2, 2020⁶, modified the mandatory loan portfolio percentages established in Supreme Decree No. 1842 (complementary to Supreme Decree No. 2055), reinstating more stringent levels after a temporary relaxation implemented in February 2020 (Supreme Decree No. 4164) in response to the COVID-19 pandemic.

Pursuant to Supreme Decree No. 4408⁷, the current minimum portfolio quotas are established as follows:

- Multiple Banks: 60% - Productive + Social Housing (minimum 25% for productive loans only).
- SME Banks: 50% - Microenterprises in the productive sector (specialization).
- Housing Finance Entities: 40% - Social Interest Housing.

Pursuant to Supreme Decree No. 2055⁸, the current maximum interest rates for loan operations are established as follows:

- Micro-enterprises: 11.5%.
- Small businesses: 7%.
- Medium and large businesses: For both categories, 6%.

III. Crisis 2023-2025 – New Government Takes Office.

The Bolivian economic crisis that began in 2023 has deep structural roots, but its acute manifestation began in February-March of 2023 with a liquidity crisis in the financial system triggered by a speculative surge in foreign currency and the intervention of a private financial institution, Banco Fasil, due to accounting irregularities. This event also revealed systemic vulnerabilities accumulated over years: a 40% drop in natural gas production (the main source of foreign exchange), the depletion of the Central Bank of Bolivia's (BCB) net international reserves from approximately \$15 billion in 2014 to barely \$1.8 billion at the end of 2024, and to \$ 3.713 million at the end of 2025⁹, and a structural fiscal deficit financed through monetary issuance.

The main indicators of economic deterioration in Bolivia were:

- The exchange rate gap: The official fixed exchange rate of Bs 6.96 per dollar contrasted sharply with a parallel market that reached Bs 20 per dollar at its peak during May, 2025, (a gap close to 3:1), demonstrating an unsustainable artificial overvaluation.
- Banking restrictions: Financial institutions implemented progressive restrictions on dollar withdrawals and transfer of foreign currency outside of Bolivia, limiting access to savings denominated in foreign currency and generating public distrust.
- Fuel shortages: Between the end of 2023, until the end of 2025, Bolivia has faced chronic shortages of gasoline and diesel, with lines of up to 12 hours at service stations, paralyzing productive and commercial activities.
- Accumulated inflation: Between May 2024 and April 2025, accumulated inflation exceeded 15%, the highest since 2008, eroding purchasing power, especially in sectors with fixed incomes. By the end of October 2025, accumulated inflation was around 20%¹⁰.

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The exchange rate gap reached close to 3:1, with the parallel market peaking at Bs 20 per dollar against the official Bs 6.96, demonstrating an unsustainable artificial overvaluation.

During 2023 and 2024, financial intermediation entities experienced a progressive increase in their funding costs without being able to trespass this increase proportionally to their lending rates in regulated segments, due to the following factors:

- Public Pension 's Fund Manager as the main funder: The Public Long-Term Social Security Funds Manager (formerly AFP - Private entities now nationalized) became the main provider of resources for the banking system but demanded higher deposit rates and shorter terms than traditional financing, increasing the net cost of funding.
- Increased Country Risk: The loss of international reserves and fiscal deterioration made it difficult for Bolivian banks to access external credit lines, traditionally cheaper.
- Intervention of Banco Fasil: The exit/bankruptcy of this entity from the market, which financed at below-average rates due to its business model, reduced competition and put upward pressure on market rates.

5. Supreme Decree No 2055 of 9 July 2014 (Bolivia).

6. Supreme Decree No 4408 of 20 December 2020 (Bolivia).

7. Supreme Decree No 4408 of 20 December 2020 (Bolivia), art 4.

8. Supreme Decree No 2055 of 9 July 2014 (Bolivia), art 5.

9. Central Bank of Bolivia, 'Informe de Administración de las Reservas Internacionales Netas (RIN) – Tercer Cuatrimestre de 2025' (February 2026) <https://www.bcb.gob.bo/webdocs/publicacionesbcb/2026/02/12/IN-FORME%20CUAT%20RIN%203-2025%20%282%29.pdf> accessed 7 February 2026.

10. National Institute of Statistics (Bolivia), 'Gráficos IPC' (INE, 2026) <https://www.ine.gob.bo/index.php/graficos-ipc/> accessed 7 February 2026.

According to a report published by the Central Bank of Bolivia¹¹, active interest rates in unregulated segments (consumer, non-social housing, large business loans) experienced significant increases between 2022 and 2023: business loans from 5.70% to 6.27%, SME loans from 6.64% to 7.02%, consumer loans from 19.67% to 20.07%, housing loans from 8.79% to 9.45%, and microloans averaging 17.85% in 2023. This market segmentation allowed banks to maintain minimal profitability but concentrated on the increased cost of credit in sectors less protected by regulation.

Regarding portfolio percentages (60% for varied banks in priority sectors), generated detrimental incentives during the crisis:

- Portfolio reclassification: Entities partially met quotas through accounting reclassification of loans (for example, business loans to producers recorded as productive), without necessarily expanding financing to target sectors.
- Investment in government bonds: Faced with difficulties in profitably placing regulated loans, banks allocated surplus resources to Treasury bonds, reducing productive intermediation.

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The regulated interest rates and mandated loan portfolio quotas, designed for a period of economic prosperity, became structurally incompatible with the reality of the crisis, hence they require an urgent adjustment.

- Aggressive competition in microcredit: Multiple banks intensified competition with savings and credit cooperatives and development finance institutions (DFIs) in the microenterprise segment, the only one where they could place regulated loans with any margin, affecting the sustainability of specialized entities.

On November 8, 2025, Rodrigo Paz Pereira assumed the presidency of the Bolivian State, signifying a shift in the State's vision, particularly in the economic sphere, from the previous 20 years of administration. The new Paz administration, issued Supreme Decree No. 5503 of December 17, 2025¹², known as the “Decree for the Homeland,” declared an “Economic, Financial, Energy, and Social Emergency.” This decree contained over 120 articles, the most important of which contemplate the following measures:

- Elimination of subsidies: Adjustment of fuel prices (special gasoline Bs 6.96/liter, diesel Bs 9.80/liter), generating estimated fiscal savings of \$10 million per day.
- Investment attraction: Extraordinary legal and tax stability regime for up to 15 years, repatriation of capital with 0% tax, tacit approval.
- Tax simplification: Creation of the SIETE-RG simplified tax system (5% on sales up to Bs 250,000 annually).
- Social compensation: 20% increase in the national minimum wage (from Bs 2,750 to Bs 3,300), improvement of social benefits (Dignity Income +43%, Juancito Pinto Bonus +50%), creation of the PEPE (Programa Extraordinario de Protección y Equidad) Program for vulnerable sectors.
- Loan deferral: Authorization for financial institutions to defer payments for up to 6 months on loans for social housing and microenterprises in the productive sector, upon the express request of borrowers, implementing Law No 1670 dated November 05, 2025.

However, Supreme Decree No. 5503 was repealed/substituted by Supreme Decree No. 5516 of January 13, 2026¹³, due to strong protests from various social sectors. The new Supreme Decree No. 5516 contains 32 articles, compared to the 121 articles of Supreme Decree No. 5503, but maintains the core of the economic adjustment measures, including: elimination of fuel subsidies, salary increases and bonuses, deferral of loans for social housing and micro enterprises, and a 0% tariff on industrial machinery until December 2026. This partial rectification highlights the tension between fiscal discipline and governability, as well as the political limitations of accelerated structural reforms in a crisis context.

The regulated interest rates and mandated loan portfolio quotas, designed for a period of economic prosperity (robust international reserves, stable exchange rate, controlled inflation), became structurally incompatible with the reality of the crisis, hence they require an urgent adjustment.

¹¹ Central Bank of Bolivia, “Informe de Estabilidad Financiera – Enero 2024” (BCB, January 2024) https://www.bcb.gob.bo/webdocs/politicascbb/IEF_ene24.pdf accessed 7 February 2026.

¹² Decreto Supremo No 5503 (Gaceta Oficial del Estado Plurinacional de Bolivia, 18 December 2025) <http://www.gacetaoficialdebolivia.gob.bo> accessed 7 February 2026.

¹³ Decreto Supremo No 5516 (Gaceta Oficial del Estado Plurinacional de Bolivia, 4 February 2026) http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis_gob/281033 accessed 7 February 2026.

IV. Final Considerations.

Financial regulation of prices in the Economic System, even when pursuing legitimate social objectives, generates structural distortions when underlying macroeconomic conditions deteriorate. The fixed interest rate regime of Supreme Decree No. 2055 functioned relatively well between 2014 and 2022 thanks to a context of stability (robust international reserves, a viable fixed exchange rate, controlled inflation, and moderate economic growth).

However, the crisis from 2023 to 2025 revealed its rigidity, mainly due to the following reasons:

- Inability to automatically adjust: The prohibition of variable rates prevented financial institutions from managing interest rate risk in the face of increased funding costs, compressing margins and reducing incentives to expand portfolios in regulated segments.
- Parallel credit markets: Artificially low rates generated excess demand not met by formal banks, fostering informal credit markets with significantly higher rates.

The mandatory minimum portfolio levels (Articles 66 and 67 of Law No. 393 and implemented through supreme decrees) aim to achieve financial inclusion and financing for traditionally excluded sectors (microenterprises, small businesses, social housing).

The results have been mixed, with both successes and failures. Among the successes are effective expansion of microcredit and SME credit, access to banking services for sectors previously served only by microfinance NGOs, and the development of specialized credit technologies for risk assessment in informal production units. Failures include formal compliance through accounting reclassification without real expansion of financing, predatory competition between multiple banks and specialized entities (cooperatives, IFDs, EFVs) in priority areas, and reduced risk diversification by forcing sectoral concentration contrary to prudential principles.

In the medium term, Bolivia must redirect and/or update its financial regulatory framework. The model of intensive state intervention (fixed rates, mandatory quotas, exchange restrictions) showed structural limitations in face of the crisis. A comprehensive reform should include: (i) an interest rate regime with flexible bands adjustable according to macroeconomic conditions, (ii) portfolio quotas reviewed quarterly based on systemic stability, (iii) effective independence of the Central Bank of Bolivia (BCB) for monetary policy without subordination to fiscal financing, (iv) strengthening of prudential supervision (ASFI) with sufficient resources and autonomy, (v) clear bank resolution mechanisms to prevent systemic contagion in the event of bankruptcies, and (vi) deepening of the capital market as an alternative source of business financing.

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Financial regulation of prices in the Economic System, even when pursuing legitimate social objectives, generates structural distortions when underlying macroeconomic conditions deteriorate.

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Photo of Salar de Uyuni, the world's largest salt flat. Potosí - Bolivia

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DOMINICAN REPUBLIC

CROWDFUNDING: The Future of the Fintech Ecosystem and the Dominican Securities Market

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BIO

Fabio Guzmán Saladín is chair of the firm's Corporate and M&A department and a leading figure in its most significant cross-border mandates. He advises on mergers and acquisitions, project finance, corporate restructurings, and capital markets transactions, with a particular focus on inbound investment and international deal structuring. He is widely recognised by international and domestic clients for his ability to navigate complex corporate frameworks, high-stakes negotiations, and regulatory requirements with a practical, business-driven approach. His sector experience spans banking and fintech, energy (conventional and renewable), real estate, tourism, aviation, construction, retail, food and beverage, and free zones.

Mr. Guzmán Saladín regularly represents multinational clients investing or operating in the Dominican Republic and is a key point of contact for corporations with regional and cross-border interests. He is a frequent contributor to international legal publications on M&A, project finance, and secured transactions and serves as former President and current Treasurer of the Dominican-German Chamber of Commerce. He was recently elected Chair of the Board of Directors of SCG Legal, reflecting strong peer recognition and international standing, and has also been appointed co-managing partner of the firm.

GUZMÁN ARIZA



BIO

Emil José Santana Núñez is an Attorney at Guzmán Ariza, where his practice focuses on corporate and commercial law, financial markets, banking and securities, mergers and acquisitions, restructuring, and regulatory compliance, with particular experience at the intersection of law and finance. Emil holds a Master's Degree in Financial Markets Law and is currently pursuing advanced finance studies with a concentration in capital markets.



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CROWDFUNDING: The Future of the Fintech Ecosystem and the Dominican Securities Market

I. Introduction

Over the past decade, the Dominican Republic's securities market has undergone progressive institutional strengthening, aimed at consolidating the financial system in accordance with international standards and promoting a more transparent channeling of capital toward the real economy. However, this development has coexisted with structural limitations in access to financing for entrepreneurs, startups, and small and medium-sized enterprises (SMEs),

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The approval of the Regulation on Investment Crowdfunding in the Securities Market introduces a specific regime for the issuance of securities through digital platforms authorized and supervised by the Superintendence of the Securities Market.

particularly those with innovative or technology-intensive business models, for which traditional mechanisms have, in many cases, proven insufficient.

In this context, the approval of the Regulation on Investment Crowdfunding in the Securities Market introduces a specific regime for the issuance of securities through digital

platforms authorized and supervised by the Superintendence of the Securities Market, expanding alternatives for access to capital, strengthening investor protection, and preserving the integrity of the financial system. Furthermore, this regulatory framework may contribute to addressing a structural challenge of the Dominican corporate environment: the limited culture of corporate compliance, by requiring minimum standards of transparency, financial information, and governance as a condition for accessing collaborative financing.

This article analyzes the impact of the new regulation on the Dominican Fintech ecosystem, its main regulatory characteristics, and the challenges and opportunities it presents for the development of the national capital market.



II. New Regulatory Landscape for Crowdfunding in the Dominican Republic

The Dominican Fintech ecosystem has experienced progressive growth, driven by the digitization of financial services, the expansion of electronic commerce, and the increasing adoption of technological solutions by consumers and companies, giving rise to a diversification of business models encompassing payments, electronic wallets, alternative credit, digital remittances, Insurtech, and investment platforms. Nevertheless, this dynamism has coexisted with significant obstacles to the consolidation of the sector, among which stand out limited access to venture capital, fragmentation of the regulatory framework, and, until recently, the absence of regulatory instruments allowing public investment to be channeled into emerging projects in a regulated manner.

In this context, the Crowdfunding Regulation incorporates investment crowdfunding into the regulated perimeter of the Dominican securities market, establishing an institutional framework that allows non-traditional issuers to access public savings through the issuance of publicly offered securities via authorized digital platforms. Its scope of application includes platforms, issuers, and intermediaries, expressly delimiting excluded activities, and organizing the activity under a scheme of regulated access, informational transparency, prudent risk management, and continuous supervision.

First, the regulation defines authorization and registration requirements in the Securities Market Registry for both crowdfunding platform administrators and issuers of crowdfunding securities. In the case of platforms, authorization is required as centralized trading mechanism administrators, involving a legal and financial evaluation phase and an operational and technological validation phase.

Regarding issuers, which may take the form of corporations, simplified corporations, or limited liability companies, they are subject to a specific authorization regime for each issuance, without dispensing with the minimum standards of transparency, accountability, and information required in a regulated market.

Second, the regulation significantly strengthens investor protection by establishing strict information and disclosure obligations, as well as introducing quantitative limits on investments by non-professional investors. This approach responds to a concrete social reality characterized by the vulnerability of broad segments of the population to fraud and abusive financial schemes, which has motivated sustained public policy aimed at strengthening investor protection within the Dominican financial system.

The information and disclosure obligations ensure that platforms and issuers provide investors with sufficient, truthful, clear, and timely information regarding funded projects, the risks associated with the investment, and the issuer's financial condition. In this way, the principle of transparency becomes the central axis of crowdfunding, recognizing that information asymmetry constitutes one of the principal inherent risks of this type of investment scheme.

With respect to investment limits, the Crowdfunding Regulation establishes for non-professional investors an annual maximum amount of RD\$915,000.00 in crowdfunding securities, in both the primary and secondary markets, as well as a limit of RD\$300,000.00 per individual issuance. These amounts may be indexed annually by the Superintendence of the Securities Market in accordance with accumulated inflation. This scheme responds to a prudential logic of protecting retail investors and mitigating concentration risk, without restricting the participation of professional investors.

The regulation establishes a regime of continuous supervision under the Superintendence of the Securities Market, which goes beyond mere initial authorization and includes inspection powers, periodic information requirements, verification of regulatory compliance and corporate governance rules, as well as the imposition of corrective or sanctioning measures in accordance with current regulations.

This regulatory structure adopts a proportional regulation approach, adjusting capital market requirements to the scale, nature, and specific risks of investment crowdfunding, facilitating the participation of non-traditional issuers and new intermediaries, while preserving the principles of integrity, transparency, and investor protection that underpin the Dominican financial system.

III. Regulatory Challenges in Implementation

Despite the advances introduced by the Crowdfunding Regulation, the practical implementation of investment crowdfunding poses relevant regulatory challenges, particularly with respect to its proper operational integration within the Dominican securities market ecosystem. Among the main challenges is the necessary harmonization of this regime with other transversal regulations applicable to the Fintech ecosystem, especially those related to personal data protection, cybersecurity, and the prevention of money laundering and terrorist financing, taking into account the digital nature of the platforms and the profile of the participants involved.

Likewise, it is necessary to strengthen interinstitutional coordination among the supervisory bodies of the financial system in order to avoid regulatory overlaps and ensure coherent supervision. Within this framework, the adoption of regulatory experimentation schemes, such as regulatory sandboxes, may facilitate early identification of risks and the progressive adaptation of the regulatory framework. The most immediate challenges, however, are concentrated on the effective implementation of crowdfunding public offerings, particularly on the coordination between the regime applicable to platforms as centralized trading mechanisms and the provisions governing issuers and public offerings of securities.

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Second, the regulation significantly strengthens investor protection by establishing strict information and disclosure obligations, as well as introducing quantitative limits on investments by non-professional investors.

i. Crowdfunding Issuers and Applicable Requirements

The Crowdfunding Regulation limits the status of issuer of crowdfunding securities to commercial companies incorporated in accordance with the laws of the Dominican Republic that do not carry out activities exclusive to the regulated financial sector, thereby preserving the functional delimitation between the different segments of the financial system. Consistent with the Securities Market Law, the regulation differentiates the type of securities that may be issued depending on the issuer's corporate form, providing that limited liability companies and simplified corporations may only issue fixed-income securities, while corporations may additionally issue equity securities.

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By contrast, issuers of equity crowdfunding securities are subject to the corporate governance regime applicable to the securities market.

Although the requirements imposed on issuers of crowdfunding securities are simplified compared to those applicable to a conventional public offering, in accordance with the principle of proportional regulation, such simplification does not imply a relaxation of minimum standards of transparency and accountability. Consequently, the issuer must make available to

investors, among other information, the following:

- Annual financial statements audited by an external auditor authorized in the securities market.
- Annual corporate update and disclosure of material events as they occur.
- Report on the use of funds raised through the issuance of fixed-income securities.
- Compliance with periodic information requirements established by the Superintendence of the Securities Market, taking into account the characteristics of the issuer or the securities issued.

a) Issuer Corporate Governance Criteria

The regulation establishes two differentiated corporate governance regimes depending on the nature of the securities issued as crowdfunding.

In cases involving the issuance of fixed-income crowdfunding securities, the issuer is subject to the corporate governance rules provided in Dominican corporate law. This regime presents a moderate operational burden, as it allows many governance rules to be structured through the company's bylaws, in accordance with the will of the partners or shareholders. Nevertheless, the regulation specifically strengthens rules relating to conflicts of interest and agreements between directors, the company, and related parties, which must be submitted for approval by the corresponding shareholders' meeting.

By contrast, issuers of equity crowdfunding securities are subject to the corporate governance regime applicable to the securities market. This implies a more robust governance structure, which includes, among other aspects, prior verification of the suitability of members of the management body, adoption of a corporate governance code, and compliance with enhanced standards of transparency and internal control.

b) Issuer Onboarding and Due Diligence

The issuer's application to be onboarded to a crowdfunding platform entails, for the platform's managing company, the obligation to conduct comprehensive due diligence, covering corporate, regulatory, and compliance aspects, as well as proper alignment with the platform's business plan established by the managing company. This function is essential to mitigate legal, reputational, and operational risks, and to ensure that projects offered to the public meet the minimum standards required by the regulation.

In cases where a relationship exists between the platform managing company and the issuer, the regulation requires evidence of a related-party transactions policy, intended to properly delimit and manage conflicts of interest that may arise during the structuring and placement of the issuance.

ii. Public Offering of Crowdfunding Securities: Procedural Aspects and General Considerations

The Crowdfunding Regulation introduces a series of criteria that operate as preliminary filters prior to the submission of public offering projects. Among these are: (i) the prohibition of restrictions that prevent or hinder the free transferability of securities; (ii) the requirement of equality of political and economic rights for all holders of securities in an issuance; and (iii) the clear definition of the amount to be issued, the nominal value per unit, and the total number of securities.

In the case of fixed-income crowdfunding securities, the regulation establishes that their maximum term may not exceed five (5) years, counted from their initial allocation to investors, as well as a minimum nominal value of RD\$100.00 (approximately US\$2.00) per unit. These provisions seek to facilitate access by retail investors and reinforce instrument liquidity.

Additionally, the regulation establishes maximum fundraising thresholds, determined based on the issuer's economic classification:

- **Small enterprises:** up to a maximum of RD\$30,000,000.00 (approximately USD\$470,000.00);
- **Medium-sized enterprises:** up to a maximum of RD\$60,000,000.00 (approximately USD\$930,000.00); and,
- **Enterprises exceeding the medium-sized threshold for at least one (1) year:** up to a maximum of RD\$100,000,000.00 (approximately USD\$1,550,000.00).

The use of funds raised is subject to express restrictions. In particular, the resources may not be allocated to mergers or acquisitions, acquisition of securities of other companies, granting loans to third parties, or refinancing debts unrelated to the ordinary course of business. This approach reveals that the regulation conceives crowdfunding as a mechanism oriented toward organic growth, productivity, and the real expansion of issuers, ensuring that investment materializes in tangible assets or projects.

Regarding offering timelines and validity periods, the regulation establishes that each public offering shall be unique and shall have a maximum placement period of forty-five (45) business days, counted from publication of the issuance on the corresponding platform.

The issuer may establish a minimum funding amount or percentage, and if such threshold is not reached within the authorized period, the offering shall be automatically cancelled, and the corresponding publicity mechanisms must be activated. Securities not placed shall be considered null and excluded from the Registry, without the possibility of being reused in subsequent issuances. The issuer may request a new issuance once six (6) months have elapsed since the closing of the prior offering.

The public offering shall also have an authorization whose validity may not exceed ninety (90) business days, counted from its registration on the crowdfunding platform. Upon conclusion of this period, the securities shall be allocated to investors.

Finally, the Superintendence of the Securities Market shall have a period of fifteen (15) business days to decide on authorization and registration of the public offering, and may deny it through a reasoned decision, among other circumstances, when the information submitted does not conform to the regulation, when timely observations are not remedied, or when any relevant fact arises that may affect the proper functioning of the securities market.

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These provisions seek to facilitate access by retail investors and reinforce instrument liquidity.” Short, positive, and focused on benefits for small investors.

IV. Conclusion

The approval of the Crowdfunding Regulation constitutes a milestone in the evolution of the Dominican securities market by expressly integrating an alternative financing mechanism within the formal regulatory perimeter. This regulatory framework expands sources of access to capital for startups and SMEs, while strengthening investor protection and confidence in the financial system.

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Taken together, the Crowdfunding Regulation lays the foundations for a more robust and competitive Fintech ecosystem, aligned with international best practices.

The proportional regulation approach adopted by the regulation balances regulatory flexibility, informational transparency, and prudential supervision, allowing savings to be channeled toward the productive economy, fostering financial inclusion, and diversifying the capital market. Nevertheless, the effective impact of this regime will depend on its proper implementation, coordination among supervisory authorities, and the adoption of sound governance, compliance, and risk management practices by market participants. Taken together, the Crowdfunding Regulation lays the foundations for a more robust and competitive Fintech ecosystem, aligned with international best practices.

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GERMANY

International Banking Review 2026/27; Regulatory Outlook and Market Developments

P W C



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Dr. Michael Huertas is a partner and the global and European Financial Services Legal Leader at PwC Legal. Michael advises financial services firms, crypto-asset service providers and issuers, as well as multinational corporations, on a wide range of cross-border banking and finance, capital markets, structured finance and derivatives transactions, as well as complex financial regulatory, supervisory and enforcement matters. He is qualified and practises as a solicitor advocate (England and Wales), solicitor (Ireland) and as a Rechtsanwalt/attorney-at-law (Germany). Michael frequently speaks at conferences and publishes on global financial regulatory issues.



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Dr. Hagen Weiss is a lawyer and former Federal Government Director and - with a PhD in DLT systems theory - specializes in the law of crypto assets. He is one of the leading lawyers in the field of digital finance and crypto assets - particularly in matters relating to DLT and blockchain in connection with financial institutions and technology companies, as well as issues relating to the German eWpG, the Markets in Crypto Assets Regulation (MiCAR), the EU DLT pilot program, and decentralized finance (DeFi). As a federal official, he has contributed significantly to the regulatory and legal framework for crypto assets in Germany, at the European and international level. In addition, he has been involved with the underlying technology for many years and is familiar with its actual technological features and developments. Having worked as a civil servant for federal authorities and the Federal Ministry of Finance, Hagen Weiss also has extensive knowledge and experience in advising on strategic regulatory decisions.

Market context and structural themes

Germany's universal banking model enables existing market participants to integrate crypto-asset services-spanning deposit-taking, custody, brokerage, issuance, and payments-under a single supervisory dialogue. The Electronic Securities Act (**Gesetz über elektronische Wertpapiere, "eWpG"**) has materially reduced friction for on-chain issuance and lifecycle management of bonds and, increasingly, shares, catalysing tokenisation pilots across treasury,

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The Electronic Securities Act (Gesetz über elektronische Wertpapiere, "eWpG") has materially reduced friction for on-chain issuance and lifecycle management of bonds and, increasingly, shares.

securitisation, and fund units. Concurrently, the EU's Markets in Crypto-Assets Regulation (Regulation (EU) 2023/1114, "**MiCAR**") establishes a uniform perimeter for Crypto-Asset Service Providers ("**CASPs**")-entities authorised to provide one or more crypto-asset services to clients on a professional basis.

This framework draws

fintech and crypto-native players into an EU-passportable regime, challenging banks on speed and product breadth while narrowing perceived regulatory arbitrage. Strategic partnerships are prevalent, including bank-led white-labelling for crypto custody and brokerage, and fintech-led tokenisation platforms serving banks. Balance sheet treatment and capital remain practical constraints: banks must manage Basel prudential classification for crypto-exposures alongside expectations on operational risk, third-party risk, and outsourcing.



Regulatory architecture and institutional landscape

Germany operates within an EU-first framework, where directly applicable regulations establish minimum harmonisation and national transposition plays a smaller role than under earlier directives. MiCAR now governs the issuance and public offering of crypto-assets, including asset-referenced tokens ("**ARTs**")-crypto-assets that purport to maintain a stable value by referencing another value or right, or a combination thereof, including one or more official currencies-and e-money tokens ("**EMTs**"), which purport to maintain a stable value by referencing a single official currency. MiCAR also governs CASP authorisation for services including custody, trading, exchange, execution, placing, advice, and portfolio management. The EU's Transfer of Funds Regulation (**Regulation (EU) 2023/1113, "TFR"**) extends 'travel rule' requirements to crypto-asset transfers, ensuring originator and beneficiary information accompanies transactions. The Distributed Ledger Technology Pilot Regime (Regulation (EU) 2022/858, the "DLT Pilot Regime") provides exemptions allowing market infrastructures to admit and settle tokenised financial instruments within defined limits. In parallel, the Digital Operational Resilience Act (Regulation (EU) 2022/2554, "DORA") overlays ICT risk and third-party risk management across financial institutions, including CASPs where captured by their regulated status.

At the national level, the Banking Act (**Kreditwesengesetz, “KWG”**), Securities Trading Act (**Wertpapierhandelsgesetz, “WpHG”**), and the securities prospectus and markets in financial instruments frameworks apply on a functional basis. The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, “BaFin”) continues to characterise many tokens as financial instruments or securities depending on their rights and transferability, applying the prospectus regime, market abuse prohibitions, and the Markets in Financial Instruments Directive (Directive 2014/65/EU, “MiFID II”) conduct rules accordingly. The Payment Services Supervision Act (**Zahlungsdiensteaufsichtsgesetz, “ZAG”**) governs e-money issuance and payment services, and is critical where business models intertwine fiat rails with crypto. The eWpG provides the legal basis for electronic and crypto-registered securities, embedding duties for register keepers and establishing liability and conflict of law rules. Anti-money laundering and countering the financing of terrorism (“**AML/CFT**”) obligations are governed by the Anti-Money Laundering Act (**Geldwäschegesetz, “GwG”**), which already captures crypto custody and exchange services and is now integrated with EU-level travel rule obligations.

Licensing, prudential and conduct requirements for banks and CASPs

Banks offering crypto-asset services typically integrate those activities into their existing licences, subject to prior notification and supervisory review of the business case, risk controls, and outsourcing arrangements. For standalone providers, CASP authorisation is the primary route, with transitional arrangements available only for entities that were operating under national law within defined timelines. The authorisation process requires robust governance, fit-and-proper management, and safeguarding of clients’ crypto-assets and funds. It also mandates organisational separation between proprietary and client activities, conflict-of-interest management, custody controls, outsourcing oversight, market abuse monitoring, and transparent fee and risk disclosures. Although MiCAR is not a capital regime akin to the Capital Requirements Regulation and Capital Requirements Directive (together, “**CRR/CRD**”), national competent authorities (“**NCAs**”) – the authorities designated by each EU Member State to supervise MiCAR compliance – expect adequate own funds calibrated to operational and custody risks. For ART and EMT issuers, NCAs expect reserves, investment policies, and redemption mechanisms aligned to the stabilisation design.

Conduct requirements have tightened, particularly for retail-facing promotions. Disclosures must be fair, clear, and not misleading. Risk factors should address volatility, technology and operational risks, and legal and regulatory uncertainties. Order handling, best execution, inducement rules, and product governance expectations apply by analogy where crypto-assets qualify as financial instruments. Under MiCAR, CASPs must manage conflicts of interest, prevent the misuse of inside information, and implement effective market surveillance for admitted trading pairs on their platforms.

Issuance and disclosure: ARTs, e-money tokens and other crypto-assets

MiCAR draws a sharp line between ARTs, EMTs, and other crypto-assets. ARTs, which reference one or several assets, face stringent obligations covering white papers, governance, reserves, redemption, and ongoing disclosure, with additional layers for significant ARTs designated at EU level by the European Banking Authority (“**EBA**”). EMTs are treated as a species of e-money, requiring authorisation as an electronic money institution (“**EMI**”) or credit institution and adherence to par value redemption and safeguarding rules. Other crypto-assets may be publicly offered or admitted to trading on a platform, subject to an approved crypto-asset white paper, with liability attaching for inaccuracies and omissions. In Germany, consumer protection overlays and BaFin’s scrutiny of stabilisation mechanics, reserve management conflicts, and retail marketing have proven decisive in review outcomes.

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Banks offering crypto-asset services typically integrate those activities into their existing licences, subject to prior notification and supervisory review.

Tokenised securities remain within the traditional securities perimeter. Where a token embodies a transferable security within the meaning of MiFID II and the Prospectus Regulation (Regulation (EU) 2017/1129), issuers must comply with the securities prospectus regime and, if applicable, ongoing disclosure and market abuse laws. While the eWpG facilitates the issuance of electronic securities via central registers or crypto-securities registers on distributed ledger technology (“DLT”)—a technology enabling the distributed operation and use of electronic ledgers—it does not displace these underlying securities law obligations. Issuers must weigh the DLT Pilot Regime for market infrastructure access against private DLT venues and bilateral arrangements for issuance and lifecycle management.

AML/CFT, sanctions and operational resilience

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Where a token embodies a transferable security within the meaning of MiFID II and the Prospectus Regulation, issuers must comply with the securities prospectus regime.

Germany’s AML/CFT framework applies with full scope to banks and CASPs, encompassing customer due diligence, transaction monitoring, sanctions screening, and suspicious activity reporting. The travel rule now extends to crypto-asset transfers, requiring collection and transmission of originator and beneficiary information, with specific handling for unhosted wallets (also

known as self-custodied or non-custodial wallets)—wallets where the user retains direct control of the private cryptographic keys rather than entrusting them to a third party. Firms must implement risk-based controls, including enhanced due diligence for higher-risk geographies and products, and robust screening for sanctioned persons and blocked wallet addresses. DORA mandates ICT risk governance, incident reporting, resilience testing, and third-party risk oversight, requiring both CASPs and banks to align their cloud and custody technology stacks with EU resilience expectations.

Enforcement and litigation trends

Supervisory focus has shifted from permissibility to performance. Expected enforcement priorities include: unlicensed activity under MiCAR or national law; inadequate asset segregation and custody controls; shortcomings in stablecoin reserve management and disclosure; misleading marketing to retail clients; inadequate market surveillance; and failures in travel rule implementation and sanctions screening. The liability regime under white papers and securities prospectuses is likely to drive private actions following significant price dislocations or operational failures. Register keeper liability under the eWpG—including for erroneous or untimely entries in crypto-securities registers—is an emerging vector for claims as tokenised issuance scales.

Outlook for 2026/27

Key inflection points include: the end of MiCAR’s transitional periods for legacy national operators; the maturation of European Securities and Markets Authority (“ESMA”) and EBA Level 2 standards (the delegated and implementing acts that supplement the primary legislative framework); the growing use of tokenised collateral and settlement assets by banks; and further expansion of the eWpG’s scope and market uptake for shares and fund units. Banks that industrialise digital issuance and custody—integrating on-chain corporate actions, collateral mobility, and programmable payments—are well-positioned to capture treasury and capital markets flows. Policy debates on the prudential classification of crypto-exposures, the treatment of staking and lending, and possible extensions of market abuse and short-selling rules to a broader class of crypto-assets will shape the next regulatory phase.

Data Protection and Privacy

The intersection of crypto-asset services with the General Data Protection Regulation (Regulation (EU) 2016/679, “GDPR”) is increasingly significant, particularly given that personal data may be processed on public and immutable blockchains. CASPs must assess their roles as data controllers or processors, especially in relation to customer onboarding, transaction monitoring, and decentralised finance (“DeFi”) front-ends—DeFi referring to financial services delivered via smart contracts on public blockchains without traditional intermediaries. Key challenges include applying the right to erasure (“right to be forgotten”) in the context of blockchain’s immutability, managing cross-border data transfers, and implementing privacy by design. The European Data Protection Board (“EDPB”) has issued guidance on blockchain and GDPR, but practical compliance remains complex, especially for permissionless networks. Firms must also consider the interplay with DORA and ICT risk management, ensuring data protection is embedded within operational resilience frameworks.

Consumer Redress and Dispute Resolution

While MiCAR and general consumer protection law require effective complaints handling, mechanisms for consumer redress in the crypto-asset sector are still evolving. Retail clients must have access to transparent and timely complaint procedures, with clear escalation paths to alternative dispute resolution (“ADR”) bodies where appropriate. Critical issues include the enforceability of smart contracts-self-executing code deployed on a blockchain that automatically performs agreed actions when specified conditions are met-and the availability of legal recourse following protocol failures, hacks, or mis-selling. CASPs should ensure contractual terms address dispute resolution and that consumers are informed of their rights and remedies. The practicalities of pursuing claims remain a developing area, especially where decentralised protocols or decentralised autonomous organisations (“DAOs”)-blockchain-based entities governed by encoded rules and token-holder voting rather than traditional corporate structures-are involved. Questions around jurisdiction, applicable law, and the identification of responsible parties persist.

Interplay with Other EU Digital Finance Initiatives

The regulatory landscape for digital assets is shaped not only by MiCAR, DORA, and the DLT Pilot Regime, but also by the broader EU Digital Finance Package. The Digital Finance Strategy sets out the EU's vision for a competitive and innovative digital financial sector, while DORA is closely linked to the NIS2 Directive (Directive (EU) 2022/2555) on cybersecurity. The proposed European Single Access Point (“ESAP”) will provide a centralised platform for accessing financial and sustainability data, thereby facilitating transparency and regulatory reporting. Firms should monitor these developments to ensure holistic compliance and leverage synergies across regulatory initiatives.

Practical Implementation Challenges

Translating regulatory requirements into practice presents a range of operational challenges. Market infrastructure providers-such as central securities depositories (“CSDs”), entities that operate securities settlement systems and provide initial recording and central maintenance of securities accounts, and custodians-must upgrade systems to support large-scale tokenisation and DLT integration. Legacy IT systems may require significant adaptation to interface with blockchain networks, raising issues of interoperability, data integrity, and cyber risk. The insurance market for digital asset risks remains nascent, with limited availability and high premiums for coverage against theft, hacking, or operational failures. Compliance teams also face a skills gap and resource constraints, necessitating investment in training and recruitment to meet new regulatory expectations.

Supervisory and Enforcement Trends

Supervisory authorities in Germany and across the EU are increasingly active in monitoring compliance with crypto-asset regulations. Recent enforcement actions have focused on unlicensed activities, inadequate AML controls, and misleading marketing. BaFin and other regulators are enhancing cross-border cooperation through joint investigations and information sharing, particularly in relation to DeFi and cross-jurisdictional service provision. Firms should expect a proactive supervisory approach, with particular focus on governance, risk management, and consumer protection.

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While MiCAR and general consumer protection law require effective complaints handling, mechanisms for consumer redress in the crypto-asset sector are still evolving.

Innovation and Regulatory Sandboxes

To foster responsible innovation, both Germany and the EU have established regulatory sandboxes and innovation hubs. These initiatives provide a controlled environment for testing novel business models, products, and technologies under regulatory supervision. The DLT Pilot Regime itself functions as a form of sandbox for market infrastructure, while BaFin's TechQuartier and the European Forum for Innovation Facilitators ("EFIF") offer additional support. Participation in these programmes can provide regulatory clarity and facilitate constructive engagement with supervisors.

Interoperability and Standardisation

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Integrating ESG criteria into tokenised products and services is becoming both a competitive differentiator and a regulatory imperative.

Interoperability between DLT networks, custodians, and market infrastructures is essential for the scalability and efficiency of tokenised markets. The EU is supporting the development of industry standards and technical protocols through the European Blockchain Services Infrastructure ("EBSI") and standard-setting bodies such as the International Organization

for Standardization ("ISO") and the European Committee for Standardization (Comité Européen de Normalisation, "CEN"). Harmonisation of messaging standards, identity frameworks, and settlement processes will be critical to achieving seamless cross-border operations and reducing operational risk.

Central Bank Digital Currency (CBDC) and Public Sector Initiatives

The potential introduction of a digital euro by the European Central Bank ("ECB") and other public sector digital asset initiatives could profoundly impact the competitive landscape and regulatory priorities. A digital euro, as a central bank digital currency ("CBDC"), would provide a risk-free, programmable settlement asset, potentially reshaping payment systems and the role of private stablecoins. Public sector pilots and consultations are ongoing; market participants should monitor developments closely to assess strategic and compliance implications.

ESG and Sustainability Considerations

Environmental, social, and governance ("ESG") factors are gaining prominence in financial regulation, and crypto-asset markets are no exception. The environmental impact of blockchain infrastructure—particularly energy-intensive proof-of-work consensus mechanisms—has attracted significant regulatory and public scrutiny. Firms may be required to disclose the sustainability profile of their products, including carbon footprint and energy usage, in line with the EU's Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088, "SFDR") and forthcoming ESG reporting standards under the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464, "CSRD"). Social and governance considerations—such as inclusivity, transparency, and the robustness of AML controls—are also increasingly relevant to supervisory assessments. Integrating ESG criteria into tokenised products and services is becoming both a competitive differentiator and a regulatory imperative, as investors and counterparties demand greater transparency on the sustainability characteristics of digital asset offerings.

Litigation and Jurisprudence

Emerging case law and judicial trends in Germany and the EU are beginning to shape the legal landscape for crypto-assets, smart contracts, and DAOs. German courts have addressed issues such as the legal classification of tokens, the enforceability of smart contracts, and liability for protocol failures or fraudulent schemes. While jurisprudence remains limited, early decisions suggest a pragmatic approach: courts focus on substance over form, applying existing legal principles—including contract, tort, and insolvency law—to novel technologies. Questions of jurisdiction and applicable law are particularly acute where decentralised protocols operate across borders or where the identity of responsible parties is unclear. Ongoing litigation, regulatory guidance, and academic commentary will continue to clarify the rights and obligations of market participants. Firms should monitor these developments to inform their risk management and contractual frameworks.

International Alignment and Divergence

While the EU and Germany are at the forefront of crypto-asset regulation, significant differences remain compared to other major jurisdictions. The United Kingdom, having departed from the EU, is developing its own regulatory framework for crypto-assets, with proposals focusing on stablecoins, custody, and trading platforms, though the pace and scope of reform remain subject to ongoing consultation. The United States continues to operate a fragmented regime, with overlapping federal and state authority and ongoing debates over the classification of tokens as securities or commodities. Switzerland and Singapore have established themselves as innovation-friendly jurisdictions with clear licensing pathways for digital asset businesses, while maintaining robust AML and prudential standards. Firms operating internationally must navigate these divergences, ensuring compliance with local requirements and monitoring developments in global standard-setting forums such as the Financial Stability Board (“FSB”) and the International Organization of Securities Commissions (“IOSCO”). The evolving international landscape creates both challenges—regulatory fragmentation and compliance burden—and opportunities for jurisdictions and firms that can offer regulatory certainty and cross-border interoperability.

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The evolving international landscape creates both challenges—regulatory fragmentation and compliance burden—and opportunities for jurisdictions and firms that can offer regulatory certainty and cross-border interoperability.



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HUNGARY

A long-awaited new insolvency regime on the Hungarian horizon

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Erika participated in developing the "Budapest rules", the Hungarian adaptation of the London rules of financial restructuring, a system of support for companies in financial difficulty, usually involving the cooperation of a number of creditor banks. She is also an arbitrator at the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, and the leader of AmCham's Banking Regulatory Committee in Hungary.

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His expertise includes capital and derivatives-related transactions and he has assisted several private equity funds (including venture capital funds) in various licensing procedures from registration through operation to dissolution.

A long-awaited new insolvency regime on the Hungarian horizon



In Germany, the number of insolvency proceedings broke a ten-year record in 2025, and the numbers continue to rise. According to certain forecasts, insolvencies may increase by 20% among large corporate entities in 2026. While no precise Hungarian data for 2025 is available at the time of writing, the number of insolvency proceedings has been increasing dramatically in recent years. Historical data anyway shows that the Hungarian market typically follows trends in the German market. Among our clients, certain banks hold stronger fears for the upcoming year, while others take

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In Germany, the number of insolvency proceedings broke a ten-year record in 2025, and the numbers continue to rise.

a less pessimistic view, but no one realistically expects a significant decrease in the number of insolvent companies.

Perhaps inspired by this economic situation, the Hungarian government has drafted a new bankruptcy law alongside a new law introducing compulsory dissolution procedure — a new procedure intended

to replace the simplified liquidation procedure and compulsory liquidation procedure. The draft laws have not yet been adopted but were circulated among key stakeholders at the end of last year, and the market expects their adoption soon. The sooner the better, one might say, as despite various major amendments in recent years, everyone agrees that there is room for improvement in the efficiency of Hungarian insolvency proceedings. According to a 2024 country study by the World Bank, the Hungarian insolvency regime received only 65.8 points out of a possible 100, finishing closer to North Macedonia (60.1) than to the Slovak Republic (72.6). Before analyzing the most important changes in the draft laws, let us examine the current state of the insolvency regime.

Since the change of regime, the Hungarian insolvency framework has been built on two pillars: the liquidation procedure, aimed at termination, and the bankruptcy procedure, aimed at business continuation. The bankruptcy procedure was never very popular and shortly after its introduction became rather exceptional (only 15 bankruptcy procedures were initiated in 2023).

Against this background, banks and other large creditors have always been motivated to find contractual solutions with their troubled debtors rather than initiating court-driven procedures. This interest became more pronounced in response to the 2008 financial crisis, when the so-called Budapest Rules were developed based on the London Approach.

The Budapest Rules are non-mandatory principles that parties may voluntarily apply in a restructuring scenario. The fundamental premise of the Budapest Rules is that financial distress need not be a zero-sum game. When creditors and debtors approach difficulties cooperatively rather than adversarially, both sides can achieve better outcomes than through rigid statutory procedures. Formal insolvency proceedings, such as the bankruptcy procedure, inevitably destroy value: public announcements stigmatize the debtor, triggering panic among other creditors and business partners, while legal costs and procedural delays consume assets that could otherwise be used to satisfy creditor claims.

Under the Budapest Rules framework, creditors — particularly banks financing the same debtor through syndicated loans — appoint a single coordinator to negotiate with the debtor. This streamlined approach eliminates the chaos of multiple creditors pursuing independent enforcement actions, which typically results in a destructive race to seize assets. The coordinated approach preserves the debtor's operational capacity while creditors collectively develop the most advantageous solution.

Unlike formal proceedings published in official gazettes, negotiations under the Budapest Rules can remain confidential. This prevents the cascade effect where announcement of financial difficulties triggers immediate demands from all creditors simultaneously — often the final blow that destroys otherwise salvageable businesses. Creditors voluntarily agree to standstill periods during which they refrain from enforcement actions, allowing time for considered solutions rather than panicked asset grabs.

The framework permits tailored solutions that would be impossible in formal proceedings: selective asset sales that preserve the debtor's core operations, rescue financing to bridge temporary liquidity gaps, or restructured payment terms reflecting commercial realities. The Hungarian National Bank has endorsed these principles, recognizing that immediate enforcement of security interests should be a last resort rather than a first response.

Banks and other sophisticated creditors widely adopted the Budapest Rules in 2010 because experience demonstrates that cooperative restructuring typically yields higher recoveries than formal insolvency. A functioning business retains value that evaporates upon liquidation - customer relationships, supplier networks, skilled employees, and operational know-how all disappear when enforcement actions force closure. By maintaining mutual trust and working within flexible contractual frameworks, creditors protect their ultimate interest: maximum recovery of amounts owed.

To summarize, until 2022, black-letter law governed the liquidation procedure, but restructuring was almost exclusively driven by contractual arrangements.

Since 2022, the Hungarian legislator has implemented the EU directive on preventive restructuring procedures - not instead of, but rather in addition to, the rarely used bankruptcy procedure - hence three procedures became available. While in our practice financial restructuring is still largely based on agreements between the parties, we see more and more preventive restructuring procedures in practice. The procedure is relatively popular due to its flexibility, and in our experience, most debtors are genuinely willing to find a solution to their distressed situation (contrary to the bankruptcy procedure, where the intention is often simply to delay the inevitable). Pursuant to the new draft law, preventive restructuring procedures would remain essentially intact, as the legislator has again chosen to keep them separate from the other procedures.

With this background, let us examine the proposed new regime that is expected to come into effect in 2028. The proposed new bankruptcy law represents a comprehensive reimagining of how the country handles business failure, drawing extensively from German and Austrian models while anticipating forthcoming European Union harmonization requirements.

For the first time in Hungarian insolvency law, the new draft law explicitly codifies four guiding principles that courts and practitioners must consider throughout the proceedings.

The continued operation principle establishes that maintaining business operations - where viable - serves important interests beyond mere asset preservation. Operating businesses retain value that disappears upon cessation; they maintain employment relationships and preserve supplier and customer networks.

The cooperation principle recognizes that insolvency proceedings require good-faith participation from all parties (debtors, creditors, insolvency professionals, and courts) to achieve optimal outcomes.

The creditor interest protection principle confirms that while various interests merit consideration, the fundamental purpose of insolvency proceedings remains the satisfaction of creditor claims to the greatest extent possible.

The procedural efficiency principle requires that proceedings be conducted without unnecessary delay or expense, recognizing that prolonged insolvency destroys value and diminishes recoveries for all stakeholders.

Perhaps the most significant change in the proposed new law is the unification of insolvency procedures. Practical experience has demonstrated that the rigid separation between liquidation procedure and bankruptcy procedure is not useful. The proposed new law abandons this terminology entirely. It no longer uses the term "bankruptcy", instead establishing a single unified insolvency procedure that can be conducted with either a reorganization purpose or a liquidation purpose. This is not merely semantic rebranding, it reflects a fundamental structural change. The unified procedure would allow for more flexible movement between rescue and liquidation objectives based on actual circumstances rather than the initial procedural choice.

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Negotiations under the Budapest Rules can remain confidential.

The proposed new law introduces a structured three-phase approach that does not exist under the current system. The preparatory phase would involve preliminary asset assessment to determine whether the debtor possesses sufficient assets to justify formal proceedings. This automated preliminary examination, conducted through a new electronic insolvency system, would prevent the waste of resources on cases where no meaningful distribution to creditors is possible.

The opening phase is where the court determines the appropriate direction for the case. Using information from the application, the preliminary asset examination, and, where necessary, a comprehensive asset and viability assessment, the court decides whether to proceed with reorganization or liquidation. This expert assessment evaluates both the debtor's assets and its operational

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Perhaps the most significant change in the proposed new law is the unification of insolvency procedures.

viability, enabling economically grounded judicial decisions rather than purely formalistic determinations.

The substantive phase then proceeds according to either reorganization or liquidation rules. Crucially, only liquidation results in the business being removed from economic life. The procedural design explicitly aims to preserve viable businesses wherever

possible.

The reorganization concept represents a substantial advancement over the current bankruptcy settlement procedure. Under the current regime, the bankruptcy procedure essentially sought creditor approval for a settlement agreement — a relatively limited objective that often proved inadequate for genuine business rescue. The new reorganization framework requires development and approval of a comprehensive reorganization plan with a maximum execution period of three years.

This plan must address how the debtor's long-term operational capability and solvency will be restored. It may involve continued operation under the plan, or it may involve the sale of the business (or parts thereof) as a going concern with subsequent creditor distribution. The reorganization plan provides creditors with realistic prospects for recovering their claims while allowing viable businesses to continue operating — an outcome beneficial for employees, business partners, and the broader economy.

The shift from settlement-focused to plan-focused reorganization reflects lessons learned from more successful insolvency regimes, particularly the German *Insolvenzplanverfahren* and applies an approach similar to the logic used in the preventive restructuring procedure. Rather than simply negotiating payment terms with creditors, the debtor must demonstrate a credible path to restored viability.

The restructuring of creditor priority represents one of the most significant substantive changes. The legislative reasoning explicitly states that the reform follows the German model, aiming to ensure that creditors ranked lower under the current system can receive proportional satisfaction from the insolvency estate.

Under the current regime, the rigid priority hierarchy often meant that once higher-ranked creditors were satisfied, nothing remained for lower tiers. The proposed new law would maintain a clear priority structure — reclamation rights, secured creditors with separation rights, privileged claims, ordinary claims, and subordinated claims — but would introduce a fundamental proportionality principle within each tier.

When the insolvency estate cannot fully satisfy all claims within a particular category, distribution occurs proportionally among creditors in that category. If privileged claims can only receive sixty percent satisfaction, all privileged creditors receive sixty percent. This prevents the arbitrary outcomes where minor differences in timing or classification resulted in complete recovery for some creditors and total loss for others similarly situated.

The new draft law also provides secured creditors with a meaningful choice that did not clearly exist before. Creditors holding security interests may elect to enforce their rights independently outside the insolvency proceedings, or they may participate within the proceedings. This choice has significant consequences: independent enforcement preserves their priority position but may require them to bear procedural costs if the remaining estate proves insufficient; participation within proceedings converts their claim to privileged status and places the secured asset within the estate for orderly realization.

The current insolvency rules contain liability provisions for company leadership, but the new draft law significantly strengthens and clarifies these rules. The legislative structure now prominently features liability provisions that apply unified tort law standards (specifically, the rules governing liability for damages caused outside contractual relationships) to both directors and shareholders with limited liability.

This liability attaches to creditor claims that remain unsatisfied in liquidation proceedings. The reasoning explicitly connects these provisions to protecting creditor interests and maintaining integrity in commercial life. Directors who fail to properly manage the company's affairs as insolvency approaches, and shareholders who abuse the protection of limited liability, face personal exposure for creditor losses.

The concept of "shadow directors" receives attention as well; individuals who exercise actual control over management decisions without formal appointment may face the same liability as officially designated officers. This prevents the use of nominee directors to shield actual decision-makers from responsibility.

The proposed new law introduces comprehensive provisions addressing environmental damage in insolvency proceedings—an area that the current rules handle inadequately. Practical experience has revealed significant problems when insolvent companies leave behind contaminated sites or unaddressed environmental obligations.

The new framework requires environmental status assessments at the outset of proceedings when environmental concerns are present. Reserve funds must be established for environmental remediation. Where environmental issues exist, the proceedings follow accelerated, simplified procedures to prevent prolonged uncertainty and further environmental degradation.

As a measure of last resort, the law provides for state ownership of contaminated properties when no other solution proves viable. This prevents the worst outcome under the current system – abandoned contaminated sites with no responsible party and no resources for cleanup.

The new draft law establishes a state early warning system designed to identify businesses at risk of insolvency before crisis becomes unavoidable. This preventive orientation reflects contemporary European thinking about insolvency that earlier intervention produces better outcomes than waiting until collapse is imminent.

The system would promote accounting awareness and encourages businesses to address financial difficulties proactively. Rather than viewing insolvency procedures purely as end-stage interventions, the new framework positions them within a broader continuum of business support and restructuring options. We note that the introduction of such system was already decided simultaneously with the introduction of the preventive restructuring procedure, but the system did not start to operate.

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The restructuring of creditor priority represents one of the most significant substantive changes.

Alongside the draft insolvency law, a new draft law has been prepared introducing compulsory dissolution proceedings, a streamlined procedure for removing unlawfully operating or non-functional business organizations from the market. This proposed new framework would replace both the previous compulsory liquidation procedure and the simplified liquidation procedure. This is an important aspect, as the above-quoted, unfavourable ranking of the Hungarian insolvency regime is largely due to lengthy procedures originating in a high number of “zero asset companies” to be eliminated. This decreases transparency and is detrimental to overall efficacy as well. Under the proposed new regime, courts would initiate proceedings ex officio or upon request from other authorities. Business organizations would retain the opportunity to restore lawful operation by settling due debts, providing security to creditors, and paying procedural costs. A key innovation is

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The new draft law establishes a state early warning system designed to identify businesses at risk of insolvency before crisis becomes unavoidable.

the stricter sanctioning liability system: courts would examine the culpability of directors and members in creating and maintaining unlawful operations. Persons subject to disqualification would bear unlimited and joint liability for undisputed creditor claims—a significant departure from the current regime, where such liability was more limited. The draft law forms part of the broader insolvency

reform package and shares its underlying philosophy: protecting creditor interests while ensuring procedural efficiency. By enabling swift removal of non-viable entities and imposing meaningful consequences on those responsible for unlawful operations, the legislation aims to improve the integrity of Hungarian commercial life and reduce state costs associated with lengthy dissolution proceedings.

In the legislative reasoning for the draft insolvency law, the legislator explicitly acknowledges that Hungarian insolvency law must evolve in anticipation of European Union harmonization. The EU has been developing common frameworks for preventive restructuring, second chances for entrepreneurs, and measures to increase the efficiency of insolvency proceedings. By drawing from German and Austrian models — systems that heavily influenced EU-level thinking — Hungary positions itself for smoother adaptation to forthcoming European requirements while immediately improving domestic outcomes.

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PHILIPPINES

Recent Trends in Philippine Banking Laws and Regulations:
Enhancing Crime Prevention and Consumer Protection

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Recent Trends in Philippine Banking Laws and Regulations: Enhancing Crime Prevention and Consumer Protection



INTRODUCTION

The Philippine banking sector continues to play a central role in the country's financial system. Banks account for approximately 83 percent of the total resources of the domestic financial system,¹ underscoring their importance in supporting economic growth, facilitating capital flows, and providing financial services to businesses and consumers. As financial services increasingly migrate to digital platforms, however, financial institutions face

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Recent high-profile financial crime controversies have accelerated calls for stronger safeguards across the Philippine banking sector.

growing risks, including cyberattacks, online fraud, identity theft, and sophisticated financial scams. These developments require stronger governance, enhanced technological safeguards, and more robust consumer protection frameworks.

In recent years, Philippine regulators have responded by strengthening the

legal and regulatory framework governing financial institutions. These reforms reflect a coordinated effort to enhance the integrity of the financial system, prevent financial crime, and protect financial consumers. Recent high-profile financial crime and corruption controversies have further heightened regulatory scrutiny and accelerated calls for stronger safeguards across the banking sector.

Several legislative and regulatory initiatives illustrate this policy direction.

First, the Financial Products and Services Consumer Protection Act (“**FPSCPA**”), which took effect on June 3, 2022, introduced a comprehensive framework governing the conduct of financial service providers. The law strengthens the authority of financial regulators, including the Bangko Sentral ng Pilipinas (“**BSP**”), to oversee market conduct and enforce consumer protection standards. It also imposes obligations relating to product design, disclosure, fair treatment of clients, data protection, and dispute resolution mechanisms.

Second, the Anti-Financial Account Scamming Act (“**AFASA**”), signed into law on July 20, 2024, represents the Philippines’ first dedicated legislative response to the rapid rise of online financial scams. AFASA requires banks and other BSP-supervised financial institutions (“**BSFIs**”) to implement fraud management systems capable of detecting and preventing suspicious or fraudulent transactions and authorizes the BSP to conduct inquiries into financial accounts involved in scam-related activities.

In 2025, the BSP issued implementing circulars strengthening information technology risk management, establishing procedures for financial account inquiries and information sharing, and providing rules for the temporary holding of funds involved in disputed transactions.

Third, in September 2025, the BSP introduced additional safeguards governing large cash value transactions, requiring enhanced due diligence and documentation for large withdrawals or payouts to reduce the risk of fraud, money laundering, and other illicit activities.

Fourth, the Philippine Deposit Insurance Corporation (“**PDIC**”) increased the maximum deposit insurance coverage (“**MDIC**”) from PhP500,000 to PhP1,000,000 per depositor in March 2025, strengthening depositor protection and reinforcing confidence in the banking system.

These reforms have taken place alongside broader efforts to enhance the Philippines’ compliance with international anti-money laundering and counter-terrorism financing standards. These reforms contributed to the Philippines’ recent removal from the Financial Action Task Force (“**FATF**”) grey list,² although continued vigilance remains necessary as the country prepares for its next evaluation cycle in 2027.

1. Inquirer, Philippines’ financial system resources near P37T; banks dominated growth in 2025, accessible via <https://business.inquirer.net/574759/ph-financial-system-resources-near-p37t-banks-dominated-growth-in-2025>; last accessed on March 25, 2026.

2. FATF, Philippines, accessible via [https://www.fatf-gafi.org/en/countries/detail/Philippines.html#:~:text=Jurisdictions%20under%20Increased%20Monitoring%20%2D%202021,also%20subject%20to%20increased%20monitoring](https://www.fatf-gafi.org/en/countries/detail/Philippines.html#:~:text=Jurisdictions%20under%20Increased%20Monitoring%20%2D%202021,also%20subject%20to%20increased%20monitoring;); last accessed on March 25, 2026.

Taken together, these developments signal a clear regulatory policy direction. Philippine financial regulation is increasingly focused on strengthening consumer protection, improving fraud detection capabilities, and ensuring that financial institutions maintain robust safeguards against emerging threats in a digitalized financial environment.

The following sections discuss key regulatory developments shaping this framework, including the implementation of the FPSCPA, the expansion of deposit insurance protection, the regulatory measures introduced under AFASA, the new safeguards governing large cash transactions, and ongoing discussions surrounding bank secrecy and anti-money laundering reforms. These initiatives demonstrate the Philippine government's continued efforts to build a secure and resilient financial system capable of preventing financial crime while protecting consumers and maintaining public confidence in the banking sector.

THE FINANCIAL PRODUCTS AND SERVICES CONSUMER PROTECTION ACT

The FPSCPA is the central consumer protection statute for financial services. It strengthens regulators' market conduct powers, including rulemaking, supervision, enforcement, and dispute resolution mechanisms, and imposes baseline duties on financial service providers.

For BSFIs, the most operationally significant points are the law's expectations on product governance and complaint handling. In particular, the FPSCPA mandates providers to (i) design and distribute products appropriately, (ii) provide clear and meaningful disclosures, (iii) treat consumers fairly, and (iv) protect customer data and privacy. These requirements do not only improve consumer outcomes, they also help mitigate risks of financial fraud by tightening vulnerabilities that bad actors often exploit, such as unclear customer communications, slow dispute handling, and weak identity or channel controls.

From a contract governance standpoint, the FPSCPA also curbs provisions that unreasonably deprive consumers of meaningful remedies. In practice, this pressures institutions to align their terms, disclosures, and operational manuals with a defensible "fair treatment" posture, especially for digital products.

PHILIPPINE DEPOSIT INSURANCE CORPORATION

Deposit insurance is a key mechanism for maintaining depositor confidence and promoting financial system stability. In March 2025, the PDIC increased the MDIC to PhP1,000,000 per depositor, strengthening depositor protection and reinforcing trust in the banking system.³ While this measure is not an anti-scam mechanism in itself, it complements crime prevention objectives by reducing panic dynamics in the event of widely publicized fraud incidents and by encouraging consumers to keep funds within regulated channels.

THE ANTI-FINANCIAL ACCOUNT SCAMMING ACT

The AFASA is the Philippines' dedicated anti-scam framework for electronic and digital financial services. It addresses common forms of financial account fraud, including social engineering, account takeovers, and unauthorized transfers, and imposes specific obligations on covered institutions to implement fraud risk management systems that are commensurate with their risk profile.

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Philippine financial regulation is increasingly focused on strengthening consumer protection, improving fraud detection capabilities, and ensuring robust safeguards against emerging digital threats.

In 2025, the BSP issued implementing measures to operationalize AFASA's requirements, including rules that strengthen IT risk governance and fraud controls for BSFIs. For example, BSP Circular No. 1213, Series of 2025 updated information technology risk management expectations to implement AFASA-related requirements. BSP Circular No. 1214, Series of 2025 provides procedures for inquiry into financial accounts and information sharing pursuant to AFASA. While BSP Circular No. 1215, Series of 2025 established a framework on the temporary holding of funds that are the subject of disputed transactions and a coordinated verification process.

3. Philippine Deposit Insurance Corporation, Deposits are insured by PDIC up to P1 Million per depositor, accessible via <https://www.pdic.gov.ph/MDIC>; last accessed on March 2, 2026.

Core fraud-control expectations

AFASA-linked supervisory expectations are driving covered financial institutions to adopt real-time, prevention-oriented controls intended to identify and disrupt potentially fraudulent activity before losses are incurred. These controls typically include: (i) velocity and pattern monitoring to detect unusual transfer frequency or transaction bursts indicative of automated attacks; (ii) account-compromise indicators, such as changes in device identifiers, SIM swaps, credential resets, or abrupt modifications to account profile information; and (iii) geolocation and other contextual controls that flag transactions occurring outside a customer's usual location or established transaction patterns, including atypical cross-border activity. Institutions are also expected to conduct screening against internal and external watchlists and risk lists, including known

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AFASA is driving banks to implement real-time, prevention-oriented controls that identify and disrupt fraudulent activity before losses occur.

fraudulent accounts, compromised merchants, and other high-risk endpoints. In addition, behavioral analytics may be deployed to detect anomalous activity that departs materially from a customer's historical transaction behavior.

These measures are not merely formal compliance requirements. Properly designed and implemented,

they are operational loss-mitigation tools that shift fraud risk management upstream in the transaction lifecycle, where prevention is materially more effective and less resource-intensive than post-transaction recovery.

Consumer-facing tools as a crime-prevention layer

A distinctive feature of AFASA is its strong emphasis on customer-controlled safety tools that serve as a “last mile” safeguard against scams. For digital platforms that facilitate retail fund transfers and other high-risk transactions, the BSP has encouraged the implementation of functionalities that allow customers to directly protect their accounts. These include (i) a self-service account freeze or “kill switch” that enables account holders to immediately block outgoing transactions in the event of suspected fraud; (ii) permission and device access controls that allow customers to revoke access for trusted devices, merchants, or third-party applications; (iii) a “money lock” feature that enables users to secure a portion of their funds so that they cannot be used for online or digital transactions; and (iv) customizable transaction limits, such as daily caps, per-transfer limits, or cross-border restrictions. Collectively, these tools empower customers to respond quickly to suspicious activity and reduce the likelihood that fraudulent transactions will be successfully completed.

These tools are consumer protection measures, but they also materially strengthen crime prevention by shortening the window scammers can exploit and by improving the customer's ability to interrupt scams midstream.

Liability and accountability

AFASA's operational direction increases the pressure on institutions to show that they have adequate controls and complaint processes. Where institutions fail to implement required safeguards, regulators may take the view that the institution bears responsibility for resulting losses, depending on the fact pattern and the institution's compliance posture. The compliance implication is straightforward: fraud governance must be auditable, and dispute handling must be prompt, consistent, and well-documented.

REGULATION OF LARGE CASH VALUE TRANSACTIONS

In September 2025, the BSP issued BSP Circular No. 1218, Series of 2025, which introduced additional safeguards for large cash value transactions, including enhanced due diligence measures and stronger controls to reduce the misuse of the banking system for illicit purposes.

While the detailed mechanics depend on an institution's product set, the policy objective is consistent with crime prevention: large cash movements increase ML/TF risk and facilitate the rapid dissipation of scam proceeds. Requiring additional scrutiny, documentation, and legitimacy checks raises the cost of abuse and supports investigation and interdiction.

From a consumer protection perspective, these controls also help reduce the likelihood that scam victims can be induced to rapidly cash out or move large sums without meaningful friction or intervention.

ANTI-MONEY LAUNDERING AND BANK SECRECY

The baseline confidentiality regime

Bank secrecy in the Philippines is principally anchored on Republic Act No. 1405 (Secrecy of Bank Deposits) and Republic Act No. 6426 (Foreign Currency Deposit Act). The general rule is confidentiality, subject to defined statutory exceptions, including lawful court orders and specific regulatory or investigatory authorities, such as in Anti-Money Laundering Council-led processes under the Anti-Money Laundering Act framework.

This regime supports depositor confidence, but it can create investigative friction when authorities seek to trace proceeds of crime. As digital fraud and complex financial crimes evolve, the tension between confidentiality and enforcement capacity becomes more pronounced.

AFASA's narrow exception and controlled information use

AFASA introduces a targeted mechanism that supports scam investigations. As implemented, it enables information sharing and account inquiry processes in a scam-specific context, creating a limited pathway to obtain relevant financial information for defined purposes. This is framed as a narrow exception rather than a broad relaxation of bank secrecy.

The key policy balance is this: allow sufficient access to identify perpetrators and freeze or trace funds, while restricting use to legitimate scam investigations to avoid mission creep and preserve trust.

The case for sustained reform

There is a continuing interest in broader bank secrecy reform to strengthen the State's capacity to investigate financial crime beyond scam-specific contexts. Any such reform, however, must be calibrated. Excessively broad measures may undermine depositor confidence, while overly narrow reforms may weaken the deterrent effect against modern financial crime and corruption.

CONCLUSION

Recent Philippine banking regulation reflects an increasingly integrated approach to crime prevention and consumer protection. The FPSCPA provides the market conduct and consumer redress backbone. PDIC reforms reinforce depositor confidence. AFASA and its BSP implementing measures move fraud management toward real-time prevention, strengthen dispute handling, and require customer-controlled safety features. Large cash transaction safeguards reduce exposure to illicit fund flows and scam proceeds dissipation.

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Recent Philippine banking regulation reflects an increasingly integrated approach to crime prevention and consumer protection.

The common thread is accountability: institutions must (i) prevent losses through strong controls, (ii) respond quickly and fairly when fraud occurs, and (iii) maintain governance systems that regulators can test and trust. As technology and scam taxonomy continue to evolve, the institutions best positioned to succeed will be those that treat these rules not as compliance checklists, but as operational standards that protect customers, preserve confidence, and strengthen the integrity of the financial system.

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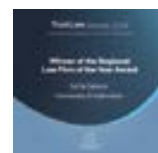
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SOUTH AFRICA

Key trends and developments in the South African banking market

WEBBER WENTZEL



BIO

Lenee specialises in financial services regulation, with expertise across insurance law, financial markets and banking law. She advises financial institutions, service providers and intermediaries on market conduct, licensing, regulatory approvals, anti-money laundering frameworks, group governance, policy development and financial products, including derivatives and commercial paper. She advises foreign financial institutions on South African regulatory frameworks and licensing obligations.

She has experience in corporate structuring, regulator engagement, and advising on multi-disciplinary transactions within the financial services sector. Her work includes insurance business transfers and drafting regulatory agreements. Lenee also advises on retail distribution models, cell captive insurance structures, and remuneration frameworks. She has a strong interest in the National Health Insurance Bill and its implications for insurers and medical schemes.



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BIO

Lerato specialises in debt capital markets, advising financial institutions, multilateral development banks, sovereigns, state owned companies, municipalities and corporates on a wide range of complex domestic and cross border capital markets transactions and the regulatory framework governing debt capital markets. She has significant experience advising banks and investors on capital qualifying and Flac instrument qualifying securities and loans, including the structuring and regulatory considerations applicable to such instruments. She also advises on the local law aspects of international offerings conducted pursuant to Regulation S and Rule 144A.

Her cross-border experience spans multiple jurisdictions across Sub Saharan Africa, including Southern Africa (Botswana, Mauritius, Mozambique, Namibia, South Africa and Zambia), East Africa (Kenya, Tanzania and Rwanda) and West Africa (Ghana and Nigeria).

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Key trends and developments in the South African banking market

As South Africa rolls out major regulatory reforms, spanning market conduct, payment systems and bank resolution, the financial sector is navigating a period of significant change. How institutions respond to these shifts will shape the country's competitiveness, stability and capacity for innovation in the years ahead.

1. Regulatory intervention

South Africa's removal from The Financial Action Task Force's

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How institutions respond to these shifts will shape the country's competitiveness, stability and capacity for innovation in the years ahead.

(FATF) greylist in October 2025 marked a pivotal step in restoring market confidence after its February 2023 placement due to deficiencies in its anti-money laundering and counter-terrorism financing (AML/CFT) framework. Since then, the country has steadily addressed several legislative deficiencies, including increased regulatory focus on how

groups manage AML risk both locally and internationally.

While delisting has boosted optimism around foreign investment, it does not mean the country is risk-free – it remains firmly on the FATF's radar. Post-delisting, regulation, especially in the banking industry is an ongoing focus. Regulatory authorities (namely the Financial Intelligence Centre (FIC), the Prudential Authority and the Financial Sector Conduct Authority (FSCA) continue to build the capacity to investigate entities across all industries. These regulators are working together to ensure that financial institutions, including banks, comply with risk management and compliance programmes required in terms of the Financial Intelligence Centre Act, 2001 (FICA). There is a focus on the scope of group-wide risk management and compliance programmes and the implementation of such programmes by large international banks with a presence into South Africa.

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Since 2023, the regulators have imposed various penalties, primarily targeting accountable institutions such as banks, insurers, asset managers and financial services providers.

An important ongoing focus is the effective implementation of obligations under FICA, which apply to all accountable institutions, including banks. According to the FIC annual report 2024/2025, 55,262 institutions are registered with the FIC and more than 13,5 million regulatory reports were submitted in the past year. It is evident that the FIC will continue to address financial crime and implement measures to strengthen South Africa's AML frameworks.

Also key to attaining effective oversight is the draft General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2025, published for public comment on 14 January 2026. This updated version of the 2024 draft expands powers related to non-governmental organisations, including lifestyle audits, and enhanced information-sharing with state entities and extends the period for retaining data and documents under FICA from five to seven years. Ultimately, the draft bill seeks to strengthen South Africa's AML/CFT system by addressing the remaining deficiencies identified in the 2021 FATF Mutual Evaluation Report, and during the remedial process leading to delisting.

These measures will better prepare the country for the next FATF Mutual Evaluation, scheduled to begin in mid-2026 and conclude in October 2027.

2. The Conduct of Financial Institutions Bill (COFI) 2026

The Conduct of Financial Institutions Bill (COFI) introduces a major shift in South Africa's financial services legislation, consolidating various industry specific conduct laws into a single framework focused on market conduct regulation and customer protection.

COFI is a key pillar in the South African government's "Twin Peaks" regulatory reform together with the Financial Sector Regulation Act, 2017 (the Financial Sector Regulation Act), promulgated in stages from 2018. These pieces of legislation separate supervision into two independent bodies: one for prudential regulation and one for market conduct. COFI aims to entrench better financial customer outcomes by incorporating principles such as Treating Customers Fairly (TCF) and the retail distribution reviews (RDRs).

Following two rounds of public commentary, COFI is expected to be introduced into Cabinet in 2026 and tabled in Parliament later in the year, with promulgation expected in 2026 followed by a transitional period of approximately three years.

Rather than regulating institutions by entity type (banks and/or insurers), COFI will regulate and trigger licensing obligations based on a company's activities, such as providing a financial product, applying broadly to all financial institutions defined in the Financial Sector Regulation Act and any service or product designated by the FSCA. This includes financial product providers (including banks), financial service providers (including investment management), holding companies of financial conglomerates and any person licensed or required to be licensed under financial sector law. From a Banks Act perspective, banks will therefore be required to be licensed under this regime. COFI extends the definitions of financial instruments and financial products to include foreign financial instruments and/or foreign financial products. It also allows for such products to be designated within the regulatory scope of COFI, which may trigger a licensing obligation.

In addition, COFI now applies to lending beyond retail loans regulated under the National Credit and requires licensing for institutional loans not previously considered financial services under the existing regulatory framework.

Financial institutions offering financial products and financial services under COFI must meet ongoing obligations including ensuring that key persons and representatives satisfy fit and proper requirements; maintaining sound proportional corporate governance standards; implementing appropriate remuneration and conflict of interest policies; and having a transformation policy in place.

While the new framework will require significant preparation, it presents a strategic opportunity for institutions like banks to build trust, improve governance and position themselves for long-term resilience and growth. Early planning and proactive action will be key.

3. Payments landscape

The payments industry is undergoing significant reform in South Africa.

The latest version of COFI includes a licensing obligation for a "payment service". The review of the national payments system is anticipated to be effected through a standalone Bill rather than through the previously proposed consequential amendments to the National Payments Systems Act, 78 of 1998, under both COFI and the Financial Services Laws General Amendment Bill.

Currently, the National Payment System Act remains in force and empowers the South African Reserve Bank (SARB) to exercise the powers and perform the duties conferred and imposed on it by the NPS.

In the National Payment System Regulation and Oversight Report (1 April 2024 – 31 March 2025) (Report), the SARB confirms its commitment to modernising and broadening access to the national payment system in South Africa.

A key pillar highlighted in the Report is the payments ecosystem modernisation (PEM) programme, which aims to create an environment that supports the adoption of digital payment solutions, enhances security and broadens access to financial services. The Report reiterates the SARB's vision, first published in 2018, which sets out nine goals to advance South Africa's national payment system. The nine goals include among others, financial inclusion interoperability and clear, transparent regulatory and governance framework.

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While the new framework will require significant preparation, it presents a strategic opportunity for institutions like banks to build trust, improve governance and position themselves for long-term resilience and growth.

The Report also mentions key regulatory documents namely a draft Exemption Notice and an Authorisation Framework Directive, which documents were consequentially published in November 2025. The documents provide clarity on the regulation of payment providers and payment activities and distinguish between banks and non-bank payment providers.

Overall, the Report reflects an enhanced focus on developing a transparent and regulatory governance framework in the payment ecosystem. The Report emphasises the need to facilitate access for non-bank participation in the national payment system and to effectively govern these entities. The next year will be critical in the enhancement and further development of the regulatory framework applicable to payment service providers.

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This development marks a significant shift in South Africa's approach to managing bank financial stability.

4. South Africa's transition from JIBAR to ZARONIA

South African financial markets have long relied on the Johannesburg Interbank Average Rate (JIBAR) as the official benchmark rate for pricing loans, bonds, derivatives and other financial instruments.

In line with global efforts to transition away from forward looking bank-quoted benchmark rates, South Africa is reshaping its reference rate landscape. The SARB, together with the Market Practitioners Group, has endorsed the South African Rand Overnight Index Average (ZARONIA) as the country's new benchmark to replace JIBAR. The SARB has announced that JIBAR will be permanently discontinued immediately after its final publication on 31 December 2026, with all JIBAR tenors ceasing to be provided and considered non-representative as of that date.

Market participants have been encouraged to ensure that all relevant financial contracts incorporate appropriate fallback provisions. Banks and other financial institutions are actively working on the repapering of contracts that reference JIBAR. Importantly, the General Finance Laws (Official Benchmarks and Procurement) Amendment Bill provides mechanisms for the replacement of official benchmarks referenced in legacy contracts. On the designated benchmark cessation date, the designated replacement benchmark, as adjusted by the designated adjustment spread will become the replacement benchmark for legacy contracts that contain no fallback provisions or contain fallback provisions that do not identify a specific replacement benchmark. This legislative intervention ensures that legacy contracts transition to ZARONIA through the operation of law, protecting market stability and continuity.

For derivatives contracts, the relevant fallback protocol provides a mechanism for market participants to adhere to standardised fallback provisions, enabling derivatives contracts to transition to ZARONIA.

5. South Africa's resolution framework and Flac instruments

Bank resolution refers to the orderly restructuring or winding-up of a failing bank, aimed at maintaining financial stability, protecting depositors and minimising recourse to taxpayer funded bailouts. Since the global financial crisis, resolution frameworks have become a pillar of prudential regulation internationally, most notably through the European Union's Bank Recovery and Resolution Directive and the United Kingdom's special resolution regime, which empower authorities to intervene early and impose losses on shareholders and creditors rather than the public purse. Against this global backdrop, South Africa introduced a formal resolution framework with effect from 1 June 2023 through Chapter 12A of the Financial Sector Regulation Act applicable to designated institutions, including banks and systemically important financial institutions. This development marks a significant shift in South Africa's approach to managing bank financial stability.

Under South Africa's resolution framework, the SARB acts as the Resolution Authority. Section 166J of the Financial Sector Regulation Act sets out the trigger for resolution: if the SARB is of the opinion that a bank is, or will likely become, unable to meet its obligations (irrespective of whether the institution is insolvent) and if it is necessary to maintain financial stability or protect depositors, the SARB may recommend to the Minister of Finance that the bank be placed in resolution.

In resolution, the SARB is empowered to take resolution action, which includes the power to, among other things, bail-in most liabilities (excluding protected liabilities) of a bank. The resolution process is guided by key safeguards, including the creditor hierarchy and the no-creditor-worse-off principle.

One of the resolution tools at the SARB's disposal is a new regulatory instrument introduced under the Financial Sector Regulation Act called a "Flac instrument" (first loss after capital). Flac instruments are a pre-identified tranche of subordinated unsecured loss absorbing debt instruments that designated banks and their bank controlling companies are required to maintain at a specified level. These instruments are intended to increase a bank's capacity to absorb losses in the event of failure. They are designed to be bailed-in, written off or converted to equity, to recapitalise a failing bank without the use of public funds. Effective 1 January 2026, six banks (namely, Absa Bank, The Standard Bank of South Africa, FirstRand Bank, Nedbank, Investec Bank and Capitec Bank) and their holding companies are required, in terms of Prudential Standard RA03 pertaining to Flac, to hold prescribed levels of Flac instruments, to be phased in over six years.

6. Amendments to the Commercial Paper Regulations

Non-bank issuers rely on the Commercial Paper Regulations (the CP Regulations) under the Banks Act to access South Africa's debt capital markets. While the CP Regulations have remained unchanged since their introduction in 1994, the framework is now undergoing significant reform, with the Prudential Authority publishing final draft amendments in January 2026 for expected implementation from June 2026.

In the final draft amendments, the Prudential Authority has responded constructively to market feedback, particularly in relation to minimum denomination scope, use-of-proceeds flexibility, auditor engagement requirements, regulatory approval requirements, regulatory capital and flac instrument carve outs, SPI approval and mandatory credit ratings.

While registered banks are not directly subject to the CP Regulations, they make extensive use of special purpose institutions (SPIs), including repack platforms, synthetic risk transfer vehicles and other structured securities conduits, to issue instruments for capital and risk management purposes. Historically, banks could issue through these unlisted structures without much regulatory oversight on the vehicles; however, under the draft amendments, SPIs issuing unlisted instruments will now require upfront approval from the Prudential Authority, with only subsequent issuances under the same programme exempt. An exemption remains for SPIs operating under genuine bilateral arrangements between an issuer and an institutional investor. The Prudential Authority has not provided clarity on prescribed timelines for granting such approvals, creating uncertainty that may slow capital optimisation and risk transfer activities.

These delays may also prompt banks to explore alternative structures for capital and risk management outside their SPI-based structured securities platforms.

A welcome aspect of the draft amendments, however, is the explicit exemption of regulatory capital (additional tier 1 and tier 2 qualifying instruments) and Flac-qualifying instruments from the operative provisions of the CP Regulations. By requiring compliance only with the foundational sections, the proposals remove a significant administrative burden and associated cost for bank holding companies issuing these instruments.

Although these draft amendments represent substantial progress and reflect constructive engagement between the Prudential Authority and market participants, this remains a final draft. There are important issues that still require clarification. Market participants therefore await the final version of the amended CP Regulations to assess how these outstanding matters will be addressed.

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Flac instruments are a pre-identified tranche of subordinated unsecured loss absorbing debt instruments that designated banks and their bank controlling companies are required to maintain at a specified level.

7. ESG and blue bonds

As South Africa continues to face water challenges, with limited supplies of usable water, compounded by ageing national, provincial and municipal infrastructure and ongoing service delivery pressures, blue bonds can serve as a tool in alleviating these crises.

Blue bonds have emerged as an important subset of green bonds – financial instruments designed to channel capital toward projects that address environmental and climate-related challenges. According to the International Finance Corporation (IFC), blue bonds are debt instruments that finance projects aimed at improving sustainable water management. The IFC explicitly links blue finance to two United Nations Sustainable Development Goals (SDGs): SDG 6 (Clean Water and Sanitation) and SDG 14 (Life Below Water).

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Blue bonds present a strategic opportunity to mobilise capital and strengthen governance in support of sustainable development.

Considering that South African banks are currently the majority issuers of green and social bonds, they are well positioned – with access to appropriate assets – to extend their issuance to blue bonds. While issuance of blue bonds is more administratively demanding than traditional green bonds, their environmental and social value often outweighs the additional effort. Blue bonds present a strategic opportunity to mobilise capital and strengthen governance in support of sustainable development. In South Africa, they could play an important role in addressing the water crisis while advancing both SDG and ESG objectives, providing a way for investors to finance the “blue economy” while adhering to sustainability requirements.

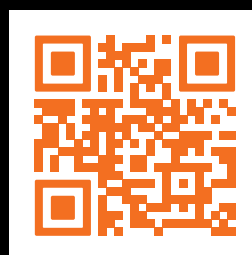
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SWITZERLAND

Swiss Banking: Key Developments and Latest Trends (2025-2026)

ERNST & YOUNG



BIO

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Shape the future
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Against a backdrop of rapidly evolving regulation, we will consider the key trends that shaped the Swiss banking landscape in 2025 and those expected in 2026. We draw insights from EY's Horizon Scanning tool that provides a structured, forward-looking view of regulatory change, capturing and analysing developments by sector to help financial institutions anticipate emerging risks, supervisory priorities and strategic implications.

Six regulatory domains stand out as particularly consequential

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The Swiss Federal Council and FINMA advanced a coordinated reform agenda targeting capital adequacy, liquidity resilience, governance accountability, and crisis management.

during this period. These are: banking stability, capital requirements, recovery and resolution; ESG and climate-related regulation; AML, transparency and sanctions; crypto-assets and digital finance; cybersecurity, operational resilience and the growing use of supervisory technology; and artificial intelligence.

As regulatory change accelerates alongside technological and business transformation, Swiss banks face a fundamental question: how can the industry keep up as regulation and transformation race ahead? Addressing this question extends beyond technical compliance and calls for a clear view of how regulatory expectations will shape future competitiveness.

Banking Stability, Capital Requirements, Recovery & Resolution

2025 has marked a pivotal strengthening of Switzerland's banking stability framework, largely shaped by the lessons drawn from the Credit Suisse crisis. The Swiss Federal Council (FC) and FINMA advanced a coordinated reform agenda targeting capital adequacy, liquidity resilience, governance accountability, and crisis management, with several measures still under consultation as of early 2026.



Shape the future
with confidence

In June 2025, the FC defined key parameters for amendments to the Banking Act and related ordinances aimed at enhancing the “too-big-to-fail” (TBTf) regime. These include stricter capital requirements for systemically important banks (SIBs) with foreign subsidiaries, the introduction of a statutory senior managers regime, enhanced recovery and resolution planning, and expanded supervisory powers for FINMA, including earlier intervention and the ability to impose fines. FINMA publicly supported these measures, emphasising their importance for improving governance, strengthening preventive supervision, and expanding the crisis toolkit.

On 21 October 2025, Switzerland and the United Kingdom agreed to extend the Service Mobility Agreement (SMA) until 31 December 2029. This extension ensures continued reciprocal access to service markets following the end of free movement of persons after the UK's withdrawal from the EU. It further supports regulatory continuity and economic predictability, indirectly strengthening Swiss banking stability.

A cornerstone proposal requires SIB parent entities to fully deduct participations in foreign subsidiaries from CET1, preventing double leverage and insulating the Swiss parent's capital from foreign losses. The implementation of Basel III as of 1 January 2025 provides the technical foundation for the next phase of Swiss capital reform. Basel III serves as a segue into targeted national adjustments, notably the forthcoming revisions to the Capital Adequacy Ordinance (CAO). The FC opened a formal consultation to amend the Banking Act and the CAO, incorporating measures from the FC's Banking Stability Report and the Parliamentary Investigation Committee, including stricter treatment of assets that are not sufficiently recoverable in a crisis (e.g., capitalised software, deferred tax assets). The consultation package, which is focused on prevention, liquidity and expanding crisis management tools, ran until 9 January 2026. In parallel, the FC confirmed that the CAO consultation launched in 2025 (mandated in April 2024) ran until 29 September 2025 and now awaits the outcome report.

FINMA is consolidating key prudential requirements into formal ordinances. The new Risk Diversification Ordinance (RDO-FINMA) and Liquidity Ordinance (LiqO-FINMA) will replace three existing FINMA circulars and are expected to enter into force on 1 January 2027. These ordinances largely codify existing requirements while incorporating Basel III-aligned refinements and new technical provisions linked to the FC's TBTF reforms, including enhanced liquidity and financial planning obligations.

Recovery and resolution planning requirements were further reinforced in 2025. FINMA's annual review of emergency and recovery plans for systemically important domestic banks confirmed compliance for some institutions, while identifying capital shortcomings in others. FINMA also signalled its support for expanding resolution options and strengthening its crisis response framework, including contingent liquidity assistance mechanisms.

FINMA has also adopted a consolidated Insolvency Ordinance, effective 1 October 2025, harmonising insolvency procedures across banks, insurers and collective investment schemes. The new ordinance incorporates lessons from recent crises and prior legislative revisions, streamlining resolution processes while maintaining institution-specific safeguards where necessary.

ESG & Climate

ESG and climate regulation in Swiss banking has shifted decisively from transparency to risk integration. The Climate and Innovation Act, in force since 1 January 2025, legally anchors Switzerland's net-zero-by-2050 objective and explicitly calls for financial flows to be aligned with a climate-friendly trajectory. While implementation relies largely on incentives and recommendations, the Act positions the financial sector as a key enabler of the transition.

FINMA's Circular on nature-related financial risks, published in December 2024, expands supervisory expectations by broadening the focus from climate risk to a comprehensive nature-risk framework, covering biodiversity loss and environmental degradation. The Circular enters into force in stages from 2026, with full application by 2028, and embeds these risks into governance, scenario analysis and core risk management.

Regarding disclosure, Switzerland has paused reform. Amendments to the Climate Disclosure Ordinance intended to align reporting with ISSB and ESRS standards from 2026 were put on hold in mid-2025 to maintain international comparability, with final decisions expected no later than 2027. Greenwashing prevention remains anchored in self-regulation. The FC continues to refrain from state regulation but will reassess the need for action by the end of 2027. This places heightened pressure on industry standards, notably the Swiss Banking Association's (SBA) updated guidelines, which now explicitly require ESG compliance checks to be included in internal audits and external audit reviews.

AML, Transparency & Sanctions

Switzerland entered a new AML transformation cycle over the past year, driven by domestic reforms and the need to address long-standing Financial Action Task Force (FATF) recommendations ahead of the next mutual evaluation. The most far-reaching change is the adoption of the Federal Act on the Transparency of Legal Entities and the Identification of Beneficial Owners (LETA), passed by Parliament in September 2025. LETA establishes a central federal beneficial-ownership register accessible to authorities and AML-obliged entities, with entry into force expected in H2 2026 following the adoption of implementing ordinances. This reform reshapes client due diligence and source-of-wealth verification across the banking sector.

Supervisory and self-regulatory expectations are evolving in parallel. The SBA issued dedicated guidance on AML due diligence in multi-banking arrangements, clarifying transaction monitoring, allocation of responsibilities and information-sharing obligations. This reflects regulators' increasing focus on complex digital value chains and shared infrastructures.

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LETA establishes a central federal beneficial-ownership register and reshapes client due diligence and source-of-wealth verification.



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Digital onboarding is also being modernised. In December 2025, FINMA launched a consultation on a partial revision of Circular 2016/7, enabling the use of the forthcoming Swiss e-ID for AMLA-compliant client identification. Once in force (expected mid-2026), this will significantly streamline remote onboarding while tightening address-verification requirements.

In parallel, Switzerland continued to tighten sanctions enforcement in line with evolving EU regimes, particularly relating to Russia and other high-risk jurisdictions, supported by frequent ordinance updates throughout 2025. At the intelligence level, cooperation intensified, with the Money Laundering Reporting Office (MROS) expanding international information-sharing through new Memorandums of Understandings.



A central theme of digital finance has been the evolution of tokenised money, with stablecoins and bank-issued deposit tokens emerging as complementary, but clearly differentiated, instruments

Crypto & Digital Finance

Swiss banking has clearly shifted from experimentation toward regulated, market-ready digital finance. A central theme has been the evolution of tokenised money, with stablecoins and bank-issued deposit tokens emerging as complementary, but clearly differentiated, instruments.

In April 2025, the SBA published an expert report positioning stablecoins as a strategic opportunity for the Swiss financial centre, provided they are Swiss franc-denominated, fully regulated, and issued by supervised institutions. Such stablecoins could materially reduce payment frictions, enable programmable use cases and strengthen Switzerland's monetary sovereignty in the digital economy. At the same time, the SBA explicitly flagged risks, notably deposit disintermediation and potential impacts on bank lending and monetary transmission, arguing for careful design and limits on scale. These considerations have since fed directly into policymaking.

In October 2025, the FC opened a consultation on amendments to the Financial Institutions Act, proposing a dedicated regulatory framework for stablecoin issuance and crypto-asset service providers. The draft introduces two new licence categories (i.e. payment institution and crypto institution) and tighter requirements around reserves, governance and AML. The consultation closed in February 2026 and the consultation report is expected during summer/autumn 2026. In parallel, Switzerland confirmed its commitment to global tax transparency by adopting the dispatch on automatic exchange of information (AEOI) for crypto-assets, with data exchange to start in 2027.

Alongside stablecoins, Switzerland has deliberately advanced an alternative: deposit tokens. In September 2025, a consortium led by the SBA, UBS, PostFinance and Sygnum successfully completed a proof of concept demonstrating legally binding interbank payments using tokenised bank deposits on a public blockchain. Unlike stablecoins, deposit tokens remain on banks' balance sheets and within existing prudential frameworks, combining programmability with financial stability. The SBA is now preparing broader industry testing and standardisation.

Supervisory clarity has also kept pace. FINMA issued new guidance in 2025 on the disclosure of crypto-based assets in banks' financial statements, clarifying custody classifications under the Distributed Ledger Technology Act while maintaining unchanged disclosure principles. Additionally, digital finance has extended beyond crypto. The launch of retail multibanking via SIX's bLink platform in November 2025 marked Switzerland's practical entry into open finance, creating infrastructure that can eventually interlink tokenised assets, payments and data-driven services. Together, these developments underline a distinct Swiss approach: innovation anchored in legal certainty, bank-led models and systemic stability.

Cyber, Operational Resilience & SupTech

Cyber risk and operational resilience have become top priorities of the Swiss banking agenda, shaped by tighter national coordination, more explicit supervisory expectations, and rapid advances in supervisory technology (SupTech). A key anchor is Switzerland's National Cyber Strategy (NCS). In May 2025, the FC took note of the first NCS implementation report, confirming tangible progress through stronger coordination structures, active projects across all strategic pillars and enhanced international cooperation.

A major regulatory milestone occurred on 1 April 2025, when mandatory reporting of cyberattacks on critical infrastructure entered into force. By late 2025 and early 2026, over 200 notifiable incidents had been reported to the National Cyber Security Centre, significantly enhancing national threat visibility, incident response and cross-sector information-sharing, including for finance. The early introduction of mandatory reporting has strengthened Switzerland's preventive cyber posture and provided a practical foundation for the strategic coordination and policy progress later reflected in the May 2025 NCS implementation report.

Operational resilience has also been sharpened through the publication of FINMA Guidance 05/2025 in November 2025. FINMA's focus has shifted from traditional operational risk management toward end-to-end resilience, defined as the ability to restore critical functions within defined tolerance levels after a disruption. This approach reflects growing cyber risks, concentration in outsourcing and cloud services, and increased interconnectedness within the financial system. The emphasis on governance, testing, and recovery capabilities aligns Swiss supervision with international standards while retaining Switzerland's principle-based regulatory tradition.

In parallel, SupTech has become a strategic priority for Swiss regulators. At the International Organization of Securities Commissions (IOSCO) Annual Meeting in May 2025 and at major international forums later that year, FINMA underscored that Artificial Intelligence (AI) is a fundamental shift for supervision, enabling earlier risk detection, more granular analysis and timelier interventions, while also heightening concerns about cyber risk and cloud dependencies. A joint FINMA-IOSCO global survey confirmed accelerating SupTech adoption, driven primarily by efficiency and insight rather than staff replacement, with investor and consumer protection as leading use cases.

As an integrated supervisory authority overseeing banks, insurers, asset managers and financial markets under one roof, FINMA benefits from a "front-row seat" to structural change across the entire financial system. This integration allows FINMA to centralise scarce technological capabilities, such as its Data Innovation Lab, and deploy them consistently across all supervisory phases, from authorisation and ongoing supervision to enforcement. Crucially, expertise is not siloed but shared horizontally across divisions.

FINMA articulated its own SupTech strategy around the "3D" framework: Data, Discretion and Discipline. Supervision is increasingly data-driven, but not data-dominated: quantitative analytics enhance risk identification, yet qualitative judgment remains essential, particularly in areas such as governance, conduct and culture. The principle of discretion ensures that technology augments, rather than replaces, human judgment, with a strict "human-in-the-loop" for all material supervisory decisions. Finally, discipline through principles anchors SupTech use in Switzerland's long-standing, technology-neutral and principle-based supervisory philosophy, avoiding rigid rule-based automation while preserving proportionality and flexibility.

Artificial Intelligence

AI has moved rapidly from experimentation to early-scale deployment across Swiss banking in 2025 and 2026, while regulation is evolving in a distinctly Swiss manner. In February 2025, the FC decided to ratify the Council of Europe's Convention on Artificial Intelligence, confirming Switzerland's commitment to a human-rights-centred framework. At the same time, it explicitly rejected an EU-style horizontal AI Act, opting instead for sector-specific regulation, with cross-sector rules limited to the protection of fundamental rights such as data protection and non-discrimination. A Swiss-specific AI framework combining binding and non-binding measures is expected by the end of 2026.

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Cyber risk and operational resilience have become top priorities of the Swiss banking agenda.



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For banks, this approach means that AI oversight will be embedded within existing financial market regulation and supervisory practice rather than through a single, prescriptive statute. FINMA's guidance on AI governance and risk management, issued in December 2024, has therefore become the central reference point. It sets clear expectations around accountability, explainability, data quality, model risk and third-party dependencies, with particular relevance for AI use in credit decisions, AML monitoring, investment suitability and customer interaction.

Industry initiatives are reinforcing this direction. The SBA's 2025 report on Generative AI provides a structured adoption model across strategy, organisation and technology, progressing from exploration to scaling and continuous improvement. Together, these developments signal that Swiss banks must prepare now for

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heightened supervisory scrutiny while continuing to innovate within a principles-based, innovation-friendly framework.

Switzerland explicitly rejected an EU-style horizontal AI Act, opting instead for sector-specific regulation, with cross-sector rules limited to the protection of fundamental rights such as data protection and non-discrimination.

Beyond regulation, Switzerland is also strengthening its international positioning in AI governance. In February 2026, the FC confirmed that Geneva will host the World Summit on Artificial Intelligence in 2027, underscoring Switzerland's role as a neutral convenor for global dialogue on responsible AI, ethics and international standards. Hosting the summit reinforces Switzerland's ambition to shape global AI governance while balancing innovation, fundamental rights and trust - an agenda that closely mirrors Switzerland's principles-based approach to AI regulation and supervision in the financial sector.



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BIO

Alan Bainbridge is a corporate lawyer based in London and global head of the firm's Banks sector. Alan focuses on strategic M&A and corporate advisory for banks and other financial institutions and regularly advises on bank-specific legislation.

Prior to becoming a partner in 2007, Alan spent a number of years in our Hong Kong office. Alan regularly advises bank boards on governance matters and bank specific legislation and has frequently contributed to academic publications such as A Practitioners Guide to Individual Conduct and Accountability in Financial Services Firms and the UK chapter of Global Legal Insights guide to Banking Regulation.



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BIO

Simon is global head of financial services knowledge and is based in London. He has a degree in law and a master's degree in business law. Simon focuses on financial services and markets regulation and is responsible for financial services knowledge globally and manages a team of financial services knowledge professionals within the London office.

Before joining the practice in January 2006, Simon worked for several years in the funds and financial services team of another city practice. During his time there he acted on the MBO of a London listed Guernsey property fund which was the first ever takeover of a Guernsey listed company.



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AI in UK Financial Services: Navigating the Regulatory Landscape

Introduction

Innovation is everywhere in financial services – 75% of UK financial services firms are already using artificial intelligence (AI)¹. With such widespread adoption, regulators and policymakers face a difficult problem, maintaining a healthy balance between harnessing the benefits of innovation while mitigating the risks. In America, policymakers have tended to focus more on the opportunities, with a regulatory environment that's more flexible and conducive to

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Innovation is everywhere in financial services – 75% of UK firms are already using artificial intelligence.

business innovation. In Europe and the UK, the regulators have often taken a different approach and focussed on the risks and call for regulation. But given the speed of AI-adoption among institutions in the financial sector the more cautious approach risks stifling AI-driven innovation and thereby reducing institutions' competitive edge.

UK regulatory policy approach

In January of this year, the House of Commons' Treasury Committee (**Treasury Committee**) issued a report on AI in UK financial services arguing that the financial services regulators were not doing enough to guide firms on their regulatory responsibilities towards AI. Unlike the EU, the UK has no AI-specific legislation or financial regulation and instead the Financial Conduct Authority (**FCA**) and the Prudential Regulation Authority (**PRA**) have asserted that the existing regulatory framework is sufficient – with, in particular, the Senior Managers and Certification Regime and Consumer Duty (**Duty**) providing, quote, “enough regulatory bite.” Notwithstanding the FCA's introduction in 2025 of its AI Live Testing service alongside its new Supercharged Sandbox, industry stakeholders expressed concern that the FCA's approach was reactive rather than proactive, leaving firms with little practical guidance on how to apply existing rules to their AI usage. In response the Treasury Committee has recommended that by the end of this year the FCA publish comprehensive, practical guidance on how consumer protection rules apply to AI, and what accountability looks like for senior managers.



Following the Treasury Committee report the FCA announced an initiative called the Mills Review² which will look into the long-term impact of AI on retail financial services, looking towards 2030 and beyond. Importantly, the review is examining what the FCA calls a potential “inflection point” in how AI technology interacts with financial services. However, at the moment the review doesn't envisage new AI-specific rules. Rather than rewriting the current regulatory framework the review is to consider how their application may need to adapt as AI changes the pace, scale, and nature of markets.

Whilst the Mills Review is inviting debate on some quite fundamental questions about consumer protection, market structure, and regulatory design there remains the question of what firms should be thinking about now.

Boards

What is clear is that the demands placed on financial institutions' boards have risen as the landscape in which they operate has become more complex with the advent of AI, underscoring the need for them to have robust governance frameworks in place. Although there are many instances of guidance from the broader governance landscape on the impact of AI for boards³, the unique challenges and risks in financial institutions makes the need for boards to focus on AI even more acute.

The FCA expects firms to have robust governance arrangements, which encompass not only effective oversight at board and senior management level but also the implementation of effective systems and controls. This includes in relation to the firm's deployment and use of AI tools. If a firm's systems and controls are found to be inadequate individuals with responsibility for these areas may be held personally accountable. This could include, for example, the Chief Technology Officer, Chief Risk Officer, or any senior manager with oversight of technology, risk, or compliance functions. This highlights the need to continually reassess the firm's responsibilities map to ensure that there are no accountability gaps and the relevant individuals have responsibility for such deployment.

1. According to the 2024 joint Bank of England–FCA survey, (published November 2024 and updated by the FCA in December 2025).

2. The Mills Review is an FCA-led initiative announced on 27 January 2026, headed by Sheldon Mills. Sheldon Mills is a senior regulatory figure in UK financial services. He serves as the Executive Director for Consumers and Competition at the FCA, a position he has held since December 2020.

3. See for example the IoD Business Paper: AI Governance in the Boardroom.

Whilst there may not yet have been FCA enforcement actions based specifically on the deployment of AI there are plenty of earlier decisions relating to other forms of technology and systems and controls which offer useful insights for boards about what can go wrong and how they can avoid some of the common pitfalls. It is well worth boards re-examining these.

Consumers

The Treasury Committee noted that it received substantial evidence about how AI could bring both considerable harm as well as benefits to everyday people using financial services. From a regulatory perspective, the bottom line for firms is that they need to be able to withstand scrutiny from the regulator in relation to how it ensures AI does not undermine consumer protection.

The Duty includes three cross-cutting rules which set out how firms should act to deliver good outcomes for retail customers. One of these rules is that firms act in good faith towards retail customers. In its guidance on the Duty⁴ the FCA provides certain examples where a firm is not considered to be acting in good faith at the product or service design phase:

Using algorithms, including machine learning or AI, within products or services in ways that could lead to consumer harm. This might apply where algorithms embed or amplify bias and lead to outcomes that are systematically worse for some groups of customers, unless differences in outcome can be justified objectively.

The important point is that the differences in outcome need to be justified objectively. The firm needs to provide a clear, evidence-based, reasonable, non-self-serving explanation for why the AI-driven approach is appropriate and fair for consumers. This may be no easy thing. Also, the Duty requires ongoing monitoring of outcomes and in this regard AI presents certain challenges in that models drift over time and data changes can introduce new bias.

Third party providers

Where firms deploy AI capabilities through external suppliers - including cloud-based AI, model-as-a-service offerings, or AI tools embedded within outsourced IT arrangements - they must treat the AI dependency as part of the relevant third-party service.

In the regulatory space there are certain rules and guidance to consider including the following. First, for banks and insurers, PRA Supervisory Statement 2/21 (**SS2/21**) sets out lifecycle expectations for third-party dependencies covering materiality assessment, data security, audit/access, sub-outsourcing, business continuity planning and exit planning. Second, FCA Finalised Guidance 16/5 (**FG16/5**), which generally applies to FCA authorized firm,⁵ clarifies conduct expectations when using cloud/other IT services and its requirements for due diligence, risk assessment, contractual safeguards, ongoing monitoring, and exit planning apply for AI-related outsourcing. There are challenges in applying SS2/21 and FG16/5 to third parties using AI including demonstrating that regulatory due diligence obligations have been discharged and agreeing liability in contracts where there is no settled industry standard for AI performance against which to measure negligence.

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Boards should re-examine past regulatory decisions on technology to understand what can go wrong.

Operational resilience is another important issue⁶ with the rules under SYSC 15A and PS21/3 applying to AI used in 'important business services' through the same framework as any other technology or process dependency. An important business service is defined as a service provided by the firm (or by another person on behalf of the firm) to one or more clients which, if disrupted, could: (1) cause intolerable levels of harm to any one or more of the firm's clients; or (2) pose a risk to the soundness, stability, or resilience of the UK financial system or the orderly operation of the financial markets. Where AI systems or tools are embedded within services that meet this threshold, firms must identify those services as important business services.

4. Finalised Guidance 22/5 Final non-Handbook Guidance for firms on the Consumer Duty - para 5.12

5. The guidance in FG16/5 does not apply to credit institutions and investment firms subject to the Capital Requirement Regulations i.e. banks, building societies and IFPRU investment firms as defined in the FCA Handbook; and payment and electronic money institutions to whom the EBA Guidelines on outsourcing arrangements are addressed.

6. There are a number of important papers from the PRA and FCA in addition to SS2/21 and FG16/5. For instance, the PRA's supervisory statements (SS) 1/21 – Operational resilience: Impact tolerances for important business services and SS2/21 – Outsourcing and third-party risk management, as well as the FCA's PS21/3 – Building operational resilience and SYSC 15A.

Given the trajectory of AI adoption, the expanding use of AI in customer-facing and core functions, it is increasingly likely that AI will underpin 'important business services' for many firms. As such, firms should be assessing whether their AI systems support services that meet the threshold for important business services. They should also be mapping their AI dependencies, including third-party providers and testing AI-specific failure scenarios against impact tolerances.

There is also the UK's critical third parties' regime under the Financial Services and Markets Act 2023. HM Treasury (**HMT**) has the power to designate certain third parties as critical third parties (**CTPs**), based on recommendations from the regulators. Once designated, CTPs must comply with minimum resilience standards

and fundamental rules set by the regulators. HMT has

indicated that it expects CTPs will represent only a small number of the overall third parties to the financial services sector. The consultation paper on the CTP oversight regime, published in December 2023, contained an estimated population of approximately 20 CTPs. So far HMT hasn't made any designations although that is expected to change this

year. Whether AI providers will find themselves caught by the regime remains to be seen. But as financial institutions' reliance on AI grows this becomes increasingly likely.

Financial crime and market integrity

AI is increasingly being used by criminals to create synthetic identities, deepfakes, and forged documents that can bypass traditional know-your-customer (**KYC**) checks. In response firms are using AI technology extensively in their anti-money laundering (**AML**), fraud detection, sanctions screening, and KYC processes.

Whilst AI offers significant advantages over traditional rule-based systems firms need to navigate several critical compliance and operational challenges. For example, the regulators will expect firms to demonstrate how AML decisions are made and this will require them to have adequate audit trails and justifications for AI-generated outcomes. However, many AI models, particularly complex machine learning algorithms, operate as "black boxes" where the decision-making process is opaque. AI systems are only as effective as the data upon which they are trained and if the historical data contains biases the AI may perpetuate or amplify these biases. As such firms need to implement robust data governance frameworks to ensure data is accurate, representative, and regularly updated. And AI models can degrade over time as money laundering typologies evolve and as such there needs to be ongoing monitoring, testing and recalibration.

In October 2024, the Bank of England (**Bank**) published a speech⁷ regarding how AI may impact financial stability. For example, the Bank flagged concerns that a trading algorithm, without the proper control environment and human oversight, could influence asset prices in an illegitimate way and/or have the potential to influence another AI system's actions in the trading ecosystem, thereby leading to a potentially systemic impact on price fluctuations in the market (albeit unintended). The Bank warned that as firms increasingly consider the use of AI in higher impact areas of their businesses such as credit risk assessment, capital management and algorithmic trading, it would expect a stronger, more rigorous degree of oversight and challenge by their management and boards.

AI also presents significant cyber-related risks and last year the G7 cyber expert group issued a statement⁸ intended to raise awareness of this issue and provide high-level guidance in the form of key considerations for financial institutions and authorities. Such considerations include whether incident response plans and playbooks are updated to account for AI-enhanced attacks and AI-specific incidents.

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As AI adoption grows, it is increasingly likely to underpin many firms' 'important business services'.

The regulators

Like other international financial services regulators, the FCA and the PRA are themselves using AI in multiple ways to enhance their own supervisory capabilities, and to support firms in their adoption of AI. The FCA is focussing on becoming a “smarter regulator”, embedding AI into core supervisory, authorisation, and consumer-facing processes. For example, the FCA applies advanced analytics to trading data to detect potential misconduct, including cross-market manipulation and other complex forms of market abuse. The FCA has also developed an in-house synthetic data tool for sanctions screening testing that has “transformed” its assessment of firms’ sanctions name screening systems. This capability allows the regulator to test how effectively firms’ systems match names against the UK’s consolidated sanctions list, including whether they handle fuzzy matches, threshold logic, and false positives appropriately. AI undeniably strengthens the FCA’s supervisory toolkit, but it also introduces material risks - many of which the FCA itself has acknowledged in its publications including model error, bias and opaqueness.

Conclusion

The UK’s approach to AI regulation in financial services stands at a crossroads. Whilst the FCA and PRA maintain that existing frameworks provide sufficient regulatory bite, the Treasury Committee’s criticisms and subsequent launch of the Mills Review signal growing recognition that the status quo may not be sustainable as AI adoption accelerates.

But for boards and senior managers, the message is clear: accountability will not wait for prescriptive guidance. Firms must proactively assess their governance arrangements, ensure responsibilities maps reflect AI-related risks, and learn from past enforcement actions involving technology failures. The Duty’s requirement to act in good faith demands that firms can objectively justify AI-driven outcomes, whilst third-party risk management frameworks require adaptation to address the unique challenges posed by AI suppliers. Meanwhile, financial crime and market integrity concerns add further layers of complexity, with regulators expecting robust oversight even as AI systems themselves become harder to explain and audit.

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Accountability for AI will not wait for prescriptive regulatory guidance.

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