



LET'S TALK ABOUT

FINTECH COMPANY FORMATION

FOR #STARTUPS

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ABOUT THE AUTHOR

Sade Rotibi

Hi, I'm Sade Rotibi and I have a background in commercial law and a passion for advising new startups throughout their journeys to success.

With a focus on banking and capital markets I have over fifteen years of legal experience, ten of which spent in the financial services industry serving as counsel to banks, investment firms, 'big four' consultancies and other institutions. I obtained my Bachelor's degree in Law in 2006 from London Metropolitan University and my Post Graduate Diploma in Law from BPP University Law School in 2010 before being admitted to the Roll of Solicitors in England and Wales in 2015.



Jurisprudence Legal, founded in 2023, is a boutique firm specializing in global financial services, commercial law and governance. With a profound understanding of both domestic and international law, we assist clients in navigating complex business transactions and legal matters.

From contract negotiations to dispute resolution, our expertise ensures comprehensive guidance and optimal outcomes.

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INTRODUCTION

THE FINANCIAL TECHNOLOGY ("FINTECH") SECTOR IS ONE OF THE FASTEST-GROWING INDUSTRIES IN THE WORLD.

In the United Kingdom, the fintech sector is particularly vibrant, with a number of successful startups and established companies. However, operating a fintech company in the UK can be complex, due to the various legal and regulatory requirements that must be met.

This Guide provides an overview of some of the key legal and regulatory issues that fintech companies must consider in the UK. The Guide covers company formation, regulatory compliance, directors' duties, financial reporting, investor relations, data security and privacy, capital raising and funding, and ongoing compliance.

By understanding and complying with these areas, fintech companies can help to ensure their long-term success in the UK market.



This Guide is not intended to be a substitute for legal advice; if you are unsure of your legal obligations, you should seek legal advice from a qualified lawyer.

FINTECH COMPANY FORMATION

THE UK IS A LEADING GLOBAL HUB FOR FINTECH INNOVATION AND THE REGULATORY ENVIRONMENT IS SUPPORTIVE OF FINTECH COMPANIES.

Fintech Innovation & Legal Structure

Fintech companies that are incorporated in the UK must comply with a number of regulations, but the regulatory regime is generally seen as favorable due to its simplicity and transparency.

The first step in forming a fintech company in the UK is to select the appropriate legal structure. The most common legal structure for fintech companies is the limited company. Limited companies are subject to the Companies Act 2006, which sets out the requirements for forming and operating a limited company.

Corporate Registration

Once the legal structure has been selected, the next step is to register the company with Companies House. Companies House is the UK government agency responsible for registering companies. The registration process is relatively simple and can be completed online.

After the company has been registered with Companies House, it is necessary to obtain a tax identification number (TIN) from HM Revenue & Customs (HMRC). The TIN is required for all UK companies, regardless of their industry.

FCA Registration

Fintech companies that provide certain financial services will also need to obtain additional licenses or registrations from the Financial Conduct Authority (FCA). The FCA is the UK's financial regulator. The specific licenses or registrations required will depend on the nature of the financial services that the fintech company provides.

Fintech companies that are considering forming in the UK should carefully consider the applicable regulations and consult with an experienced lawyer to ensure that they are in compliance.

REGULATORY COMPLIANCE

FINTECHS THAT OPERATE IN THE UK MUST COMPLY WITH A NUMBER OF REGULATIONS.

The Financial Conduct Authority (FCA) is responsible for ensuring that financial services companies in the UK operate in a fair, transparent, and responsible manner. There are a number of regulatory requirements that fintech companies must comply with, including:

Carrying out due diligence on customers: Fintech companies must conduct due diligence on their customers to ensure that they are who they say they are and that they are not involved in any financial crime.

Managing risks: Fintech companies must manage the risks associated with their activities, such as the risk of fraud, cybercrime, and market abuse.

Protecting customer data: Fintech companies must protect customer data in accordance with data protection laws, such as the General Data Protection Regulation (GDPR).

Providing clear and accurate information to customers: Fintech companies must provide clear and accurate information to their customers about their products and services.

In addition to the FCA's regulatory requirements, fintech companies may also need to comply with other regulations, such as those that are specific to their particular niche. For example, fintechs that offer cryptocurrency services will need to comply with the Money Laundering Regulations 2017. Non-compliance may constitute a criminal offence.

Regulations under the UK's AML regime place an obligation on financial services firms, including fintechs, to establish and maintain appropriate risk-based policies and procedures for detecting and preventing money laundering.

The UK regulatory framework is generally seen as favorable to fintech companies and the FCA has a number of initiatives in place to support fintech innovation, such as the regulatory sandbox, which allows fintech companies to test new products and services in a controlled environment, without having to comply with all of the FCA's regulatory requirements.

Fintechs that operate in the UK should consider retaining legal advice to ensure that they are in compliance.

DIRECTORS' DUTIES

THE DIRECTORS OF A FINTECH COMPANY HAVE A NUMBER OF LEGAL DUTIES.

...Including (but not limited to):

Acting in the best interests of the company: Directors must act in the best interests of the company as a whole, and not in their own personal interests.

Meeting regulatory obligations: Directors must ensure that the company complies with all applicable laws and regulations, including financial services regulations, data protection laws, and any specific regulations that are relevant to the company's particular niche.

Maintaining proper corporate governance: Directors must ensure that the company has a sound corporate governance structure in place, which includes establishing clear lines of responsibility, ensuring that decisions are made in a fair and transparent manner, and monitoring the company's performance.

Although compliance is not always simple, the government is eager to foster innovation and growth in this industry. This Guide is not intended to be a substitute for legal advice; if you are unsure of your legal obligations, you should seek legal advice from a qualified lawyer.



Additional Directors responsibilities include:



Being competent: Directors must have the knowledge and skills necessary to discharge their duties effectively.



Being diligent: Directors must exercise reasonable care, skill, and diligence in the performance of their duties.



Being transparent: Directors must be transparent in their dealings with the company and its stakeholders.



Being honest and trustworthy: Directors must act honestly and in good faith in the best interests of the company.



Establishing a clear board structure: The board of directors should have a clear structure with defined roles and responsibilities.



Providing clear and accurate information to shareholders: The board should provide clear and accurate information to shareholders about the company's performance and financial condition.

DATA SECURITY & PRIVACY

FINTECH COMPANIES THAT OPERATE IN THE UK MUST COMPLY WITH A NUMBER OF DATA SECURITY AND PRIVACY REGULATIONS

...Including (but not limited to):

The **General Data Protection Regulation** (GDPR): This regulation applies to all organizations that process the personal data of individuals in the European Union. The GDPR sets out a number of requirements for organizations that process personal data, such as the requirement to obtain consent from individuals before processing their data and the requirement to implement appropriate security measures to protect personal data.

The **Data Protection Act 2018** (DPA): The DPA is the UK's implementation of the GDPR. The DPA sets out the same requirements as the GDPR, but it also includes some additional requirements that are specific to the UK.

The **Cybersecurity Act 2016**: The Cybersecurity Act sets out a number of requirements for organizations that operate critical national infrastructure, such as financial services organizations. The Cybersecurity Act requires these organizations to implement appropriate security measures to protect their systems and data from cyberattacks.

The UK government has a number of resources to help fintech companies comply with data security and privacy regulations. These resources include guidance documents, regulatory sandboxes, webinars and workshops.

Fintech startups should carefully consider the applicable regulations and consult with an experienced lawyer to ensure that they are in compliance.

SOME ADDITIONAL CONSIDERATIONS FOR FINTECH COMPANIES CONCERNED ABOUT DATA SECURITY & PRIVACY:



Choose the right technology: Acting as custodians of sensitive financial information, fintechs should choose the right technology to help them protect data. This may include investing in security software, firewalls, and intrusion detection systems. As fintech companies handle vast amounts of sensitive financial data, it is imperative to adopt the right technology to safeguard information assets effectively.



Outsource security tasks: Consider outsourcing some of your security tasks to a third-party specialist. This can help to free up internal resources and to ensure that the company is getting the best possible security advice and support. As the fintech industry continues to grapple with the challenges of data protection, outsourcing security tasks to specialized third-parties remains an attractive solution.



Get insurance: Fintech startups may want to consider securing insurance to protect against financial losses which can result from data breaches. By securing the appropriate insurance policies, fintech startups can mitigate the financial burden of data breaches, ensuring their business continuity and bolstering stakeholder confidence.

Following these simple steps can help fintech startups ensure protection of their data and compliance with the relevant data security and privacy regulations.

CAPITAL RAISING & FUNDING OPTIONS FOR FINTECHS

FINTECHS OPERATING IN THE UK HAVE A NUMBER OF OPTIONS AVAILABLE TO THEM WHEN IT COMES TO RAISING CAPITAL

Venture capital: Venture capital firms invest in early-stage companies with the potential for high growth.

Angel investors: Angel investors are wealthy individuals who invest in early-stage companies.

Government grants: The UK government offers several grants to fintech companies.

Crowdfunding: Crowdfunding is a way to raise capital from a large number of people, typically through online platforms. However, specific crowdfunding 'rules' will apply - depending on the fintech's particular business model.

Initial public offering (IPO): An IPO is a way for a company to raise capital by selling its shares to the public.

Fintech startups should carefully consider their options and choose the funding source that is right for them. To ensure compliance with all applicable regulations when raising capital, fintechs should consider retaining an experienced legal advisor.



A FEW MORE CAPITAL FUNDING CONSIDERATIONS FOR FINTECHS...



Fintech startups should approach their 'exit route' wisely, critically analyzing the nature of their creation, its purpose, and the potential market for selling it. As such, it is crucial to exercise caution during the process of raising finance.

As an example, opting for equity funding too early may seem tempting, but it could be a costly decision in the long run. For instance, while a 10% annual interest rate on debt might appear expensive at present, giving away 5% of equity based on the current value (which is likely low) could turn out to be exceedingly expensive if, after five years of hard work and the development of valuable intellectual property, the company becomes worth £100 million, translating to a £5 million loss.

Thus, considering debt as an alternative funding source could prove far less expensive in such cases. To navigate these complexities, fintech startups should carefully evaluate their options and select the funding source that best aligns with their needs.



Remember to carefully evaluate each funding option in light of your startup's specific vision and growth trajectory. Seeking guidance from an experienced legal advisor will ensure compliance with the relevant regulations and help you make informed decisions throughout the fundraising process.

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