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## Welcome to the FinCoNet Newsletter

Welcome to the third 2017 edition of the FinCoNet newsletter.

The FinCoNet/Financial Services Agency of the Government of Japan (JFSA) International Seminar will be held on 16 November 2017 in Tokyo, Japan, and will address the topic of Virtual Currencies, including trends of virtual currencies exchanges/transactions and measures to supervise operations/businesses related to virtual currencies.



Image credit: [www.totalbitcoin.org](http://www.totalbitcoin.org)

## In Focus

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### Flore-Anne Messy, Head of the FinCoNet Secretariat



Flore-Anne Messy is Head of the Financial Affairs Division at the Organisation for Economic Co-operation and Development (OECD) and Executive Secretary of the International Network on Financial Education (INFE) created by the OECD in 2008. She joined the OECD in June 2000 originally to develop the activities of the Secretariat for the Insurance and Private Pensions Committee (IPPC). As such, she was in charge of a series of projects in the financial sector including the governance of insurers; the financial management of large-scale catastrophes; work related to ageing and insurance; private financing of health care as well as financial education.

Since 2010, she has been steering the work of the OECD financial education unit (including the OECD/INFE and PISA financial literacy exercises) and subsequently the OECD financial consumer protection activities (including the G20/OECD Task Force on Financial Consumer Protection). Prior to the OECD she worked at Deloitte and Touche Tomatsu Audit Paris, in the insurance and banking field. She graduated from the Institute of Political Studies of Paris and received her thesis in international economies from University Pantheon-Sorbonne of Paris in 1998.

### Consumer Protection in Digital Credit: New evidence from field experiments by the Consultative Group to Assist the Poor

**Contributor: Rafe Mazer, Independent Consultant, Policy at CGAP**

The Consultative Group to Assist the Poor (CGAP) has released a new publication, "[Consumer Protection in Digital Credit](#)", which highlights evidence from CGAP experiments involving a diverse range of digital credit providers on consumer protection priorities such as transparency, responsible sales practices, data privacy and credit reporting. CGAP's first-of-its-kind research provides clear and direct evidence that **consumer protection is not only the right thing to do, but often a wise business decision.**

# Current Issues Forum

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## Compliance Policy in Brazil

Contributor: Central Bank of Brazil's Financial System Regulation Department

In August 2017, Brazil's National Monetary Council (CMN) issued Resolution CMN 4,595, which requires financial institutions under its jurisdiction to adopt and maintain a compliance policy. To ensure that compliance risk is properly managed in a safe, sound and effective environment, the compliance policy must be commensurate with each institution's operations, size, products, services, activities and processes, as well as with its corporate structure, risk profile and business model. It is also worth noting that, within the Brazilian financial system, risks are managed in a comprehensive manner, as financial institutions are also obligated to implement a structure for continuous and integrated risk management, in accordance with provisions established by Resolution CMN 4,557/2017.

In addition to complying with the financial system's general law and other specific rules set forth by the CMN and the Central Bank of Brazil, financial institutions are expected to conduct their business based on high standards of honesty, integrity and ethics, while also taking into account the probable impacts of their actions on their shareholders, customers, employees, as well as on financial markets as a whole. In this regard, it is crucial that financial institutions have a sound corporate culture, encouraging proper behavior at all levels, ranging from operational employees to managers, as incidents of misconduct may result in significant adverse publicity and reputational damage. Therefore, the commitment must be at the top, and significant effort must be made to ensure the

dissemination of core values and principles throughout the institutions' business lines.

Due to its importance, the compliance policy must be approved by the board of directors. The policy must clearly set out requirements for establishing a permanent, independent and qualified compliance function. In this context, the compliance policy must clearly define, among other factors, compliance's purpose and scope; staff's roles and responsibilities; and the resources necessary to effectively carry out responsibilities.

The major function of compliance is to assist senior officers in effectively managing compliance risks. To achieve this goal, the staff responsible for the compliance function must test and evaluate the institution's adherence to laws, rules, standards and policies, as well as to supervisory recommendations and to applicable codes of ethics and conduct. Those responsible for compliance must also keep management informed and up to date. Furthermore, those responsible for compliance must assist in informing and training employees on compliance matters; review and monitor how compliance issues raised by independent auditors are resolved; and, at least annually, prepare a report that provides a summary of the results of their activities.

The scope of activities associated with the compliance function should be subject to periodic review by financial institutions' internal audit departments. Therefore, the compliance function must be fully segregated from the internal audit function.

This principle is derived from the three lines of defense model, which advocates that business units represent the first line of defense, and support functions, such as risk management, compliance, legal, human resources and technical support, constitute the second line. Each of these components is responsible for ensuring that risks within their scope of responsibility are appropriately identified and managed. Meanwhile, the third line of defense is linked to the internal audit function, which implies being responsible for independently assessing the effectiveness of processes associated with the first and second lines of defense.

The CMN has recently issued internal audit standards in Resolution CMN 4,588/2017, which incorporates the three lines of defense and international best practices. It establishes a set of requirements and principles that must be observed, and states that the internal audit function must report directly to the board of directors. Moreover, it obliges the board of directors to ensure the independence and effectiveness of the internal audit function and to provide the necessary tools and means for assuring that internal audit assignments are properly performed.

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## Facing Fintech Challenges: Indonesia's experiences

Contributor: Aldi F. Rubini, Robby Kurniawan, Sitaresmi Purnamasari, Indonesia Financial Services Authority (OJK)

According to Indonesia's 2016<sup>1</sup> Internet Service Provider Survey, there were 132.7 million internet users in the country, of which 47.6 percent were smartphone users. The convenience and benefits of the internet and smartphones indirectly influence Indonesians' behavior, including their use of financial services. As a result of their influence on the population, financial technology (fintech) companies are growing and developing their products to accommodate consumers' needs, especially in financial services.

Fintech penetration has become one of the Indonesia Financial Services Authority's (IFSA's) concerns, especially in terms of protecting consumers' interests. The IFSA, known as OJK (for Otoritas Jasa Keuangan), continually identifies challenges

and risks associated with fintech products and services, and has also made efforts to mitigate them.

To protect consumer interests in regard to fintech products and services, OJK has issued OJK Regulation (POJK) No. 77/POJK.01/2016 on Information Technology-Based Lending Services. The regulation is expected to support the growth of the IT-based lending industry or fintech Peer-to-Peer (P2P) Lending platforms, as new financing alternatives for communities that have yet to enjoy optimal services from conventional financial services industries, including banks, capital market, financing companies, and venture capital firms.

OJK has also issued OJK Circular Letter (SEOJK) No. 18/SEOJK.02/2017 on Information Technology-Based Lending Services Governance and Risk Management. It consists of provisions on:

- Director roles and responsibilities;
- Data and disaster recovery centers;

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<sup>1</sup> Indonesia Internet Services Providers Association, 2016, *Infographic: Indonesia Internet Penetration and User Behavior*. Jakarta: Indonesia.

- IT and electronic system management;
- Data and information management;
- Electronic system security;
- Incident handling and reliability;
- Use of electronic signature;
- Services availability and failure transaction;
- Product and services information disclosure; and
- Retention.

OJK issued the regulations as part of its ongoing efforts to promote and accelerate financial inclusion programs to give more financial access to people from all walks of life, to support economic growth, to alleviate poverty, and to create equal income distribution.

Besides these regulations, the OJK supports future digital economy innovation by preparing the infrastructure and taking other actions to mitigate and prevent risks emerging from the operations of fintech start-up companies.

In addition, OJK has carried out efforts internally, strengthening/organizing the working units assigned to handle licensing for and supervision of the fintech industry. Externally, it is building cooperation with stakeholders, including the government, companies, associations, the Indonesian Chamber of Commerce and Industry, universities and non-governmental organizations. All of these efforts are focused on creating a more favourable environment for fintech start-up companies.

Two new directorates of OJK have been formed as a response to financial technology development. These directorates are the Digital Financial Innovation Unit and Fintech Permit and Monitoring Unit,

comprising diverse OJK internal working units responsible for researching and studying the development of fintech, and preparing regulations and development strategies, as well as monitoring and licensing fintech companies' operations.

OJK also inaugurated the Fintech Advisory Forum to set the direction for the fintech industry's development. The forum will facilitate and ensure smooth, consistent, and constructive coordination among agencies, ministries, and relevant parties, and fintech start-up players. Members of the Fintech Advisory Forum include individuals deemed competent in information technology who have excellent understanding of the dynamics of digital finance innovations. They come from the OJK, Bank Indonesia, the Coordinating Ministry for Economic Affairs, the Ministry of Finance, the Ministry of Industry, the Ministry of Trade, the Ministry of Communication and Informatics, the Ministry of Home Affairs, and the Ministry of Law and Human Rights.

Furthermore, OJK has been collaborating closely with all relevant fintech stakeholders, including the Indonesian Fintech Association, relevant government institutions such as the Ministry of Communication and Information and the Ministry of Domestic Affairs, to accelerate the process of rolling out guidelines, including the "Know Your Customer" (KYC) principle, in all financial sectors within the purview of OJK. OJK also supports the Indonesian government's efforts to develop the Draft Law on Data Privacy and Digital Signature, and is preparing Certificate Authority (CA) in the financial services sector with the Ministry of Communication and Information. As a digital signature publisher, CA will be able to guarantee all signed electronic transactions so they can be secured and based on Indonesian law and regulation.

Although OJK has conducted all the activities mentioned above, there are still several risks and challenges to be

addressed. Some activities, such as increasing financial literacy and inclusion among Indonesians and improving consumers' confidence in using financial technology products and services, need to be improved in order to create fintech consumer-friendly environment. Time and considerable effort are needed to eliminate and prevent risks and to maintain consumer

protection and accommodate the growth and development of fintech companies.

The main challenge for OJK is to provide ample regulations and provisions regarding fintech products and services, and to increase financial literacy and inclusion by way of fintech products and services.

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## Regulatory Sandboxes: Harnessing innovation for financial inclusion

Contributor: Ivo Jenik, Financial Sector Specialist, Policy at CGAP

In the dynamic world of digital finance, regulators and supervisors can no longer satisfy their constituencies (financial institutions, customers, governments) with efforts focused exclusively on prevention of bad things from happening. An emerging imperative for regulators is to enable good things to happen, which in the digital era translates into a more proactive approach to innovation. For instance, the Monetary Authority of Singapore has launched [several initiatives](#) to promote Singapore as a fintech hub, including an unprecedented commitment of US\$167 million to support innovation. Inevitably, frictions arise in areas where the role of gatekeeper requires careful balancing between keeping the door firmly closed for unknown guests and allowing new entrants in, before their true character is fully known. For such situations, the regulatory sandbox has emerged as a solution that facilitates dialogue between regulators and financial service providers (regulated or aspiring), thus opening space for innovation and mutual learning.

The Consultative Group to Assist the Poor (CGAP) has conducted a [comprehensive analysis](#) of 30+ regulatory sandboxes worldwide, assessing their relevance to financial inclusion with the working hypothesis that while regulatory sandboxes can enable innovations that are likely to benefit excluded customers, they are not a one-size-fits-all solution and there may be other approaches that are more efficient, nimble, and responsive to the market

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## Banco de Portugal Regulates the Opening of Bank Deposit Accounts Exclusively through Digital Channels

**Contributor: Carla Almeida Ferreira, Banco de Portugal**

Banco de Portugal has issued new regulations for opening bank deposit accounts exclusively through digital channels, taking into account security and anti-money laundering (AML) concerns. The new regulations aim to facilitate the provision of digital banking products and services, to follow bank customers' new expectations and trends, and to ensure a level playing field between credit institutions with head offices or branches in Portugal and those with head offices in other European Union (EU) countries.

Following the assessment of the supervised institutions' responses to the "Questionnaire on banking products and services on digital channels" (December 2016), a number of regulatory and supervisory initiatives are being promoted by Banco de Portugal to adjust the regulatory framework to the digital ecosystem, not only to ensure security and consumer protection, but also to boost financial innovation.

As a first step, Banco de Portugal analysed the possible restrictions faced by credit institutions with head offices in Portugal when offering bank deposit accounts through digital channels, bearing in mind that credit institutions headquartered in other EU member states were already offering this option in Portugal under the free provision of services.

In this context, Banco de Portugal set up an internal Working Group (WG), coordinated by the Banking Conduct Supervision Department and including members of the Legal Enforcement Department (in charge of AML), the Payment Systems Department and the Legal Services Department. The WG was mandated by the board of directors

of Banco de Portugal to present a normative and technical draft regulatory initiative to create the conditions for opening bank accounts exclusively through digital channels (online and mobile). The WG analysed the applicable regulatory framework for the provision of bank deposit accounts to identify potential barriers to digital channel development, to reflect on the approaches adopted by other jurisdictions that allow the opening of bank deposit accounts exclusively through digital channels, and to present the adequate regulatory approach for adoption that meets security standards and AML requirements.

Banco de Portugal conducted a holistic assessment, taking into account all aspects of bank deposit account opening procedures, such as customer identification (Customer Due Diligence), signature of the contract, information requirements, and personal data protection.

Banco de Portugal concluded that to open bank deposit accounts exclusively through digital channels, a regulatory initiative was needed to increase the mechanisms verifying customers' identification data.

Regarding the other issues analysed, no particular changes to the regulatory framework were considered necessary, since several solutions are already in place, including the digital signing of contracts.

Banco de Portugal's work included presenting the regulatory approach to all relevant stakeholders, such as financial sector associations. These exchanges of views yielded important insights into developments in financial innovation in Portugal, the status of implementation of digital procedures by credit institutions with

head offices in Portugal, and the specific and potential difficulties of mechanisms for opening bank deposit accounts through digital channels.

Banco de Portugal therefore adjusted the regulatory framework to ensure that Portuguese credit institutions may offer bank deposit accounts that can be opened exclusively through digital channels, without hampering AML requirements, security and consumer protection. Banco de Portugal also established technical requirements for verifying customers' identification data to open a bank deposit account only through digital channels.

Thus, as of 3 July 2017, credit institutions with head offices or branches in Portugal are permitted to open bank deposit accounts by confirming customers' identification data by video conference, eliminating the need for customers to be physically present in their premises.

This new regulatory landscape represents only one part of the work Banco de Portugal is conducting on financial innovation in retail banking products. Other work in progress includes an examination of consumer loans regulations. Given the rapid pace of financial digitalisation, Banco de Portugal acknowledges the need to continually monitor innovative technical approaches emerging in the financial market, and is aware that the future will bring new challenges to financial supervision and regulation. Areas of particular focus include ensuring consumer protection, irrespective of the way the financial service is delivered, and mitigating risks to consumers and market integrity.

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## Regulation and Supervision of crowdfunding platforms in France: Encouraging the development of innovative financing methods while ensuring the protection of users

Contributor: Jade Al Yahya, ACPR, France

In France, crowdfunding platforms have been multiplying in recent years against a backdrop of a slow but sure shift towards [financial digitalisation](#). Crowdfunding is a [radically new financing service](#). Its [emergence and evolution are](#) intrinsically linked to digital developments and the rise of the internet. In the long run, this burgeoning industry may well become a significant complement to traditional funding sources in certain segments of the financing market.

To fulfil crowdfunding promises - transparency and simplicity for the creditor, lower costs and easier financing options for

the debtor, among others – the French authorities took the initiative to design new legislation to provide an effective protection framework for these activities. Created to ensure the security of stakeholders, the regulations were drafted to be fair and balanced, and to be adaptable to future developments. .

A new set of rules was thus adopted by the government order of 30 May 2014 and its implementing decree of 16 September 2014. A [label](#) was created to identify platforms that comply with the new rules. An equity crowdfunding platform – allowing for the subscription of financial securities –

must be registered at the ORIAS<sup>2</sup> as a [participatory investment advisor or, Conseiller en investissement participatif \(CIP\)](#). These platforms are regulated by the Financial Markets Authority (AMF). If the website offers to finance a project via a loan with or without interest, the platform must be registered as a [participatory financing intermediary](#), or Intermédiaire en financement participatif (IFP) to practice what we can refer to as “crowdlending”.

The Autorité de contrôle prudentiel et résolution (ACPR)<sup>3</sup> may at any time control an IFP. If the IFP collects funds on behalf of third parties, it must be authorized to provide payment services and be approved at least as a payment institution by the ACPR or registered as an agent of a payment service provider. The goal to better adjust to the evolution of crowdfunding activity led to an adaptation [of the regulation in 2016](#). Key measures include raising ceilings for financial contributions on crowdlending platforms, and the possibility for legal entities to lend via a CIP through the subscription of “mini-bonds”, an original type of interest-bearing note. At the end of 2016, 102 crowdfunding platforms existed in France – 56 being IFPs, 39 CIPs, and 7 with both statuses.

The ACPR makes sure IFPs comply with the new regulatory framework, which introduced a sort of derogation to the banking monopoly. Although IFPs are exempted from internal control rules, their managers have to meet [worthiness requirements](#) and fulfill a condition of [professional competence](#), verified by the

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<sup>2</sup> ORIAS (Organisme pour le registre unique des intermédiaires en assurance, banque et finance) is the single register of insurance, banking and finance intermediaries in France.

<sup>3</sup> The Autorité de contrôle prudentiel et de résolution (ACPR) is responsible for supervising the banking and insurance sectors in France.

ORIAS<sup>4</sup>. These platforms must also [respect rules of good conduct and organisation](#).<sup>5</sup>

They are subject to [transparency obligations](#), in that they have to publish identification and contact information, as well as details of their remuneration and all applicable fees. Similarly, they are required to publish an annual activity report. Moreover, they have a [warning duty](#), since they are in charge of alerting lenders to the risks associated with crowdlending, and borrowers to the ones linked to excessive indebtedness. Finally, they have to monitor financing operations, even in the event of cessation of activity.

The ACPR Supervision of Business Practices Department (DCPC) has been undertaking supervisory actions focused on IFPs since 2015. The Intermediary Control Service (SCI) has conducted [several on-site and remote controls in 2015 and 2016](#), and new on-site controls are in progress this year. Beyond the inspections, the ACPR has intervened in a variety of ways to support effective implementation and understanding of the new rules. In 2016, the Authority [sent individual letters](#) aimed at reminding market players of relevant provisions. Additionally, the ACPR and the AMF jointly published an [information guide](#) addressed to crowdfunding platform operators, project promoters and potential investors. Both authorities carry out efforts to raise awareness on conduct rules. In April 2016, they organized an information day to familiarize professionals with rules that apply to them. The regulatory framework [may evolve again in the future](#), for several reasons. First, to maintain the right balance between protection and innovation, regulations must continually be adapted to market changes. Second, the ACPR has identified a number of regulations that it [may](#)

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<sup>4</sup> Article L. 548-4 of the Monetary and Financial Code

<sup>5</sup> Article L. 548-6 of the Monetary and Financial Code

be useful to specify or complete. Therefore, the ACPR is considering enacting soft law – possibly on subjects like the usury rate or extinctive management – by early 2018.

Finally, it is possible that a harmonized framework at the European level will eventually be established. In its February 2015 opinion<sup>6</sup>, the EBA promoted a coordinated regulatory and supervisory

approach among member states to any new innovative financial activity, including crowdlending. As for the French regulatory framework, it has already achieved its main objectives: promoting innovation and creating the conditions for a new industry while protecting stakeholders.

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<sup>6</sup> Opinion of the European Banking Authority on lending-based crowdfunding – 26 February 2015

## FinCoNet

Established in 2013, FinCoNet is an international organisation of supervisory authorities responsible for financial consumer protection. It is a member-based organisation set up as a not-for-profit association under French law.

FinCoNet promotes sound market conduct and strong consumer protection through efficient and effective financial market conduct supervision.

Each member of FinCoNet has responsibility for and an interest in protecting the interests of consumers of financial services. FinCoNet seeks to enhance the protection of consumers, and to strengthen consumer confidence by promoting robust and effective supervisory standards and practices, and sharing best practices among supervisors. It also seeks to promote fair and transparent market practices and clear disclosure to consumers of financial services.

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