

Cryptocurrencies, Fintech and Data Protection: Where Does China Stand?

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The People's Bank of China banned all cryptocurrency transactions in September 2021. In your opinion, what are the reasons for this prohibition? Are individuals still allowed to hold cryptocurrencies?

China's efforts to prevent and control the risks associated with cryptocurrency have been ongoing for some time.

There have been different moves on this aspect. For instance, a notice *Warning Against Illegal Fundraising in the Name of "Virtual Currency" and "Blockchain"* was issued on 24 August 2018 by the China Banking and Insurance Regulatory Commission, the Office of the Central Cyberspace Affairs Commission, the Ministry of Public Security, the People's Bank of China, and the State Administration for Market Regulation of Risk. This document warns the general public that some criminals have issued so-called virtual currency, virtual assets, digital assets, etc., with the purpose of conducting illegal fundraising, pyramid schemes, and fraud by hyping the blockchain concept, while they are not based on the real blockchain technology.

On 15 September 2021, another notice was issued on *Further Preventing and Resolving the Risks of Virtual Currency Trading and Speculation* by the People's Bank of China, Office of the Central Cyberspace Affairs Commission, Ministry of Information and Technology, State Administration of Foreign Exchange, etc. (hereafter the Notice). This Notice has further clarified the nature of virtual currencies and their related activities. As stated in the Notice, virtual currencies are not legal tenders and cannot be circulated as currency in the market. Point 1 (2) sets out that virtual currency-related activities, such as exchange and providing information and pricing services for the trading of virtual currencies, are illegal financial activities. Point 1 (3) promulgates that providing services by overseas virtual currency exchanges to residents in China through the internet is regarded as an illegal economic activity.

In terms of the reason behind this, according to the Notice, virtual currencies have been used to provide means for gambling, illegal fundraising, fraud, pyramid schemes, money laundering, etc., which have been disruptive to the economy and the financial market. Furthermore, in my view, there is another

concern, namely, the environmental issues, as it is commonly known that mining cryptocurrencies will consume a lot of electricity and further causes carbon emissions. This is clearly against China's plan to enhance its environmental protection and reach carbon neutrality before 2060. The recent move by Zhejiang province's introduction of punitive electricity prices for the crypto-miners, after Hainan province and Inner Mongolia, has illustrated that [China's Zhejiang Province Implements Punitive Electricity Prices for Crypto Mining](#). Under this plan, [there will be an additional RMB 0.5 per kilowatt-hour charged](#).

According to Point 1(2) of the aforementioned Notice issued in 2021, which lists the illegal financial activities associated with the cryptocurrencies, the holding of cryptocurrencies is not specified. Though a [leading case recently published](#) by the Guangzhou Internet Court suggests that in this case, the virtual currency investment transaction activities carried out between the parties did not comply with the relevant laws and regulations thus were invalid, the losses caused thereby were borne by the parties involved. This clarifies the judicial attitude by Guangzhou Internet Court on this aspect.

Internet-based microlending companies have been flourishing since 2017. Can you tell us about shark loans that target university students?

The internet-based microlending firms have gained growth in the market. Unfortunately, emerging financing channels are sometimes abused or misused, and some predatory loan sharks targeting university students have appeared.

Students sometimes need quick and easy-obtained credits. Without due care and sufficient knowledge, they could fall into the traps set up by these loan sharks. According to [Xinhua Net](#), some Internet microfinance institutions and technology companies collaborated to target university campuses. They provide false and inducing information and lure students to over-consume on Internet shopping platforms, which results in some students falling into the loan trap with high-interest rates.



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A national crackdown had been taken place. Along with further enhancing the regulatory regime on the Internet-based microlending firms, a notice on *Further Regulating the Supervision and Administration of Online Consumer Loans for University Students* was issued on 24 February 2021 by the

General Office of the China Banking and Insurance Regulatory Commission, the Secretary Bureau of the Office of the Central Cyberspace Affairs Commission, and the General Office of the Ministry of Education and Other Departments. It notably addresses the regulatory issue and the risk management of online consumer loans for university students.

Under this Notice, microlenders are required to strengthen the identity verification of loan customers. They shall not make university students their target customers, conduct precision marketing that targets university students, or grant online consumer loans to university students. The outsourced partners of these lenders shall enhance customer screening mechanisms and not entice university students into excessive consumption, etc., through false and misleading information or by other improper ways. They shall not conduct precision marketing targeted at university students.

Apart from legal approaches, a systemic education on online security awareness and personal finance could be further enhanced. As an academic who researches and teaches financial law in the UK, I consider that more effective training in this dimension can be provided to university students both in the East and the West.

Overall, the growth of the Fintech sector in China is very remarkable. Meanwhile, the substantial development in the regulatory regime in this sector, as aforementioned, has shown the determination of China to create a more systemic, safe, and efficient environment for the Fintech sector.

Why have payments made by QR code scanning been prohibited?

There was some misunderstanding around the QR code banning. From the 1st of March 2022, certain limitations are given to the personal payment barcodes, but this does not apply to the business ones.

These changes are brought by the YinFa [2021] No. 259, *Notice by the People's Bank of China Regarding Strengthening the Administration of Payment Terminals and Related Business* (hereafter the Notice). Part 1 Point 2 of the Notice deals with barcode payment terminals and related business. Part 1 Point 2 (3) states that a system for classified management of payment barcodes shall be formulated to effectively distinguish the scenarios and purposes of use of payment barcodes by individuals and merchants and to prevent payment barcodes from being leased, lent, sold, or used for activities in violation of laws and regulations. Furthermore, according to Part 1 Point 2 (3), if individuals are associated with obvious features of business activities, then the barcode payment and receipt service institutions shall provide them with merchant payment barcodes in accordance with the relevant rules, and they shall not provide the individuals with receipt services related to business activities through personal payment barcodes. Part 1 Point 2 (3) also requires

that the barcode payment and receipt service institutions take effective measures to prohibit personal static payment barcodes from being used for the remote non-face to face receipt of payments. If this payment method is necessary, then the barcode payment and receipt service institutions shall implement the “whitelist-based management” of the corresponding payees, and carefully set the access conditions and scale for such “whitelist,” as well as the validity period, number of uses, and transaction limits on the personal static collection barcodes.

Therefore, personal payment barcodes are not entirely prohibited. Under the Notice, these barcodes cannot be used for business but can still be used normally for non-business scenarios.

According to Yuchengyi, published by Tencent who operates the leading payment channel through Wechat, in China, in the recent years, some of the personal payment barcodes have been abused or misused to facilitate certain illegal activities, which has raised regulatory concerns. For instance, some criminals used personal payment barcodes to launder money. Some people also rent out their personal static payment barcodes to obtain commissions. It enables, among other things, “point-to-point” online gambling funds transfer, which prevents the relevant regulatory bodies from tracing the gambling capital chain efficiently.

Based on Yuchengyi, the new regulation requires the upgrade from personal payment barcodes to business payment barcodes for business usage, which would be beneficial for tax revenue. In particular, it could crack tax evasion, as the new legal changes will stop some e-commerce platform owners from using their personal payment barcodes to process business transactions. Thus, the impact on individual taxes can be significant.

It shall be noted that the Notice does not give a detailed answer on how to determine if “the individuals are associated with obvious features of business activities.” As a result, the market is waiting for further clear guidance in this aspect.

On 22 February 2022, the Payment and Clearing Association of China issued the Announcement of China Payment and Clearing Association on Optimizing Barcode Payment Services (hereafter the Announcement). The Announcement has given further clarification on the misunderstood ban on the usage of the barcode payments. It states that a new “Personal Business Collection Barcode” has been set up, which users can freely choose to use. It further states that the service is not reduced for the users of this new barcode, that their experience remains unchanged, and that they can enjoy more efficient transaction reconciliation and other services. The announcement also points out that the personal payment barcodes are not closed nor stopped, and their function remains unchanged.

Thus, the Announcement provides further clarification on the issue. Overall, the misunderstanding and the subsequent clarification around this topic have showcased the importance of maintaining the payment market’s order and protecting consumers’ interests as the barcodes can provide a quick and convenient payment method.

What is the current regulation regarding data collection, use, storage, and privacy protection? What is the expected trend for the next ten years?

There has been a significant evolution in the data protection law in China recently.

Previously, personal data protection has been addressed and regulated by different laws and regulations, such as the Cybersecurity Law of the People’s Republic of China, Civil Code of the People’s Republic of China, Data Security Law of the People’s Republic of China, etc. This regulatory regime has been further enhanced. On 20 August 2021, the National People’s Congress enacted the *Personal Information Protection Law* of the People’s Republic of China (hereafter the PIPL), which came into effect on 1 November 2021.

..... The PIPL has consolidated the previous fragmented regulatory regime, which made the data protection on personal information more systematic and efficient. For instance, as stated in Chapter 3 of the PIPL, it applies to all data processing activities involving personal data within China, but also to activities outside China’s territory that affect individuals within China. In detail, this law has eight chapters, which covers rules of processing of sensitive personal information, specific provisions on the processing of personal information by state organs, rules of cross-border provision of personal information, individuals’ rights in personal data processing activities, obligations of personal data processors, and legal liability, etc.

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Those who do not comply with the PIPL need to update their internal policy and their process for handling personal data as soon as possible, as significant penalties will be applied for its violation, including fines of up to RMB 50 million or up to 5% of the personal information handlers’ revenue of the previous year (Article 66 of the PIPL).

The Provisions on Online Protection of Children's Personal Information, promulgated in 2019, is a Decree from the Cyberspace Administration of China, which applies to the collection, storage, use, transfer, disclosure, and other activities relating to children's personal information that are conducted online within the territory of China.

Furthermore, the Supreme People's Court of China has issued different provisions in the data protection area. For example, the *Provisions of the Supreme People's Court on Certain Issues Concerning the Application of Law in the Hearing of Cases of Civil Disputes over the Use of Information Networks to Infringe upon Personal Rights and Interests* issued in 2020, and the more recent *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Hearing of Civil Cases Related to the Use of Facial Recognition Technology to Process Personal Information* (hereafter the Provisions) which was issued in 2021. As identified by Article 1 of the Provisions, facial information processing shall include the collection, storage, use, processing, transmission, provision, public disclosure, etc., of facial information. Article 2 of the Provisions has listed the relevant circumstances in processing facial information, where the courts shall determine that the information processor has infringed upon the personality rights and interests of a natural person; for instance, where the information processor fails to take due technical measures or other necessary measures to ensure the security of the facial information collected and stored, which resulted in the leakage, tampering or loss of facial information.

It shall be noticed that the Ministry of Science and Technology also published the *New Generation of Artificial Intelligence ("AI") Ethics Code* (hereafter the Code) on 25 September 2021. Article 3(3) particularly addresses the personal information issue. It emphasizes, among other things,

that it is mandatory to fully respect the rights attached to personal information, to handle personal information according to the principles of lawfulness, propriety, necessity, and good faith, as well as to ensure personal privacy and data security. It also underlines that individual privacy rights must not be infringed. Furthermore, Article 11 of the Code establishes that in data collection, storage, use, processing, transmission, provision, disclosure, etc., relevant persons or institutions must strictly abide by data-related laws, standards and regulations and improve the integrity, timeliness, consistency, standardization, and accuracy of data. This is a crucial step, as China has set its aim to become the world leader in artificial intelligence by 2030, as stated in the *Notice of the State Council on Issuing the Development Plan on the New Generation of Artificial Intelligence*. A good ethical standard will help to achieve this aim.

Chinese financial laws and regulations have significantly improved in the last few decades. The legal framework is more comprehensive than before, and the legislative technique is more advanced than before. Regulatory loopholes have been reduced. As a result, a more systemic legal framework is emerging: businesses and individuals shall be ready for these changes. These will have significant positive impacts on the market.

The Laws and Regulations are quoted from Pkulaw.com. The above discussion is for educational purposes only. It does not constitute any advice.

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