

REGTECH: A few things in-house lawyers should know

George Nguyen, Senior Legal Counsel at Rabobank provides his insights into the rapid advancement of regulatory technology across the legal sector.



George Nguyen

As a Senior Legal Counsel in the Group Legal team of Rabobank Australia, George advises the business on a variety of areas, including regulatory, commercial, finance, consumer and technology law. George has a keen interest in FinTech and other emerging and innovative commercial technologies. Prior to going in-house, George cut his legal teeth as a litigator in Hong Kong.

By now most of us lawyers are probably familiar with the term 'FinTech' – i.e. Financial Technology. But a little less well known is FinTech's so-called little brother, 'RegTech', short for Regulatory Technology. It's a rapidly developing area which in-house lawyers – particularly those working in regulated industries – should keep an eye on. It has the support of government and regulators, and will greatly benefit many businesses. But it also raises some challenges for lawyers, and it will pay to think about how those challenges could be turned into opportunities for both the individual professionals themselves, and the companies they advise.

A bit of background

The concept of using technology to meet regulatory demands is not a new one, and has existed at different levels with varying degrees of success for over twenty years. However, two factors have contributed most to the recent rise of the RegTech label.

Firstly, in the aftermath of the 2008 global financial crisis and other subsequent finance industry scandals, governments around the world have reacted by vigorously imposing more and stricter regulation and increasing monitoring of the industry. This has led to an increasingly heavy regulatory and compliance burden placed on financial institutions. Citigroup Inc, for instance, reported that it had 30,000 employees working on regulatory and compliance issues in 2014, almost 13% of their entire workforce.

The second key contributor to the rise of RegTech has been the rapid advancement of innovative and disruptive technologies, e.g. cloud computing, mobile devices and increasingly, blockchain and artificial intelligence. These new technologies are opening up new possibilities and opportunities for all facets of business across the entire economy. Put simply, there is an unmet need to do things better in the regulated space, and there are now the tools available to make this happen. Welcome RegTech.

So what is RegTech?

At its simplest, RegTech is the application of new technology to help businesses meet their regulatory requirements more effectively and more efficiently.

According to BBVA Research: *"The term RegTech refers to a set of companies and solutions that marry innovative technology and regulation to address regulatory requirements across*

industries, including financial services. RegTech companies focus on the automation of manual processes and the links between steps in analytical/reporting processes, the improvement of data quality, the creation of a holistic view of data, the automated analysis of data with applications that are able to learn during the process, and the generation of meaningful reports that can be sent to regulators and used internally to improve key business decision making."

To add some colour, picture this example of the potential of RegTech: *"I have a dream. It is futuristic, but realistic. It involves... tracking the global flow of funds in close to real time (from a Star Trek chair using a bank of monitors), in much the same way as happens with global weather systems and global internet traffic. Its centrepiece would be a global map of financial flows, charting spill-overs and correlations."* - Andy Haldane, Chief Economist of the Bank of England, 2014.

Although still a little way off from becoming reality, Haldane's dream serves to highlight that much of what RegTech potentially offers revolves around innovations in the use of data.

Data is the 'new oil' of this century, and everything in business is becoming increasingly data driven. Drilling into this further, the three key areas of data innovation that are driving RegTech innovation are:

1. Connectivity – being able to access and rely upon many data sets in real time
2. Automation - being able to replace structured or repetitive tasks (often those performed by humans)
3. Artificial Intelligence – including 'machine learning', the current state-of-the-art of AI, where software has a human-like ability to learn from past decisions and self-adjust for continuous improvement.

RegTech has been widely labelled as 'the new Fintech' and while it is true that the financial services industry is leading the way in this field, RegTech has much broader application and should be seen as a movement in its own right, rather than as a subset of FinTech. RegTech

solutions could potentially benefit any sector in which regulatory compliance requires significant operational resources, e.g. healthcare and life sciences, telecommunications, transportation, energy and resources, and agriculture.

What are the benefits of RegTech?

RegTech offers many benefits for business, most of which relate to, or boil down to one of two things:

1) Cost savings

Unquestionably, the primary motivation that will drive business uptake of RegTech solutions is saving money. Regulatory compliance is expensive. It demands a lot of manpower, time and resources. There are many, many rules which can be complex and challenging to understand and apply, particularly for international companies that are subject to regulations in multiple countries. There are vast volumes of data that must be captured, monitored and assessed.

There are many significant inefficiencies, however, in the way things are currently done. Many institutions, for example, are still very reliant on manual processes, multiple systems or legacy systems that are often incompatible with other systems. One of the clearest ways that RegTech can help business save money is to improve upon existing regulatory compliance processes. Deploying RegTech solutions that can more effectively collect, manage and analyse regulatory data means less time and labour (and therefore money) spent on compliance.

One example is in 'know your customer' (KYC) processes to comply with anti-money laundering rules, where substantial numbers of staff are often needed to collect, verify and manage customer records. Human input involving manual tasks, such as checking identity documents, can increasingly be automated through the use of software. The use of novel technologies, such as voice and facial technologies for identity verification, is also increasing and rapidly evolving - all leading to making KYC faster, more reliable and therefore cheaper.

2) Risk reduction

RegTech can also help protect business from the risk of regulatory breaches. Regulatory compliance depends on risk managers keeping up to date with relevant regulatory changes, and there are now many RegTech companies dedicated to helping them to do so by providing better real-time, targeted alerts about legal, regulatory and compliance issues.

RegTech solutions can also automate risk management processes, for instance by using computers to conduct real-time surveillance of data to detect threats and risks, and to automatically alert those responsible for managing such risks. Machine learning is also being used to better predict risks, e.g. more accurately identifying money-laundering indicators. Australian-based RegTech, Red Marker, for example uses artificial intelligence to digitally review and generate a risk rating for financial marketing communications, and then, where necessary, automatically trigger the immediate delivery of relevant compliance training. From a risk perspective, these examples of automation are clearly a superior alternative to more traditional approaches to risk management, such as random audits, or the imposition of further training and procedures.

Government and Regulator Support for RegTech

Another key driver for growth in RegTech, and another reason in-house lawyers should pay attention to it, is the enthusiasm and support that governments and regulators have demonstrated for it.

The Treasurer, Scott Morrison, declared in 2016 that: *"As consumer expectations and commercial offerings are changing and advances in FinTech place new pressures, our risk, regulation and compliance systems need to adapt and evolve... Better utilising technology in regulation can help us better achieve our regulatory goals, avoid the drag effects on productivity, competition and innovation and deliver lower costs and more reliable protections for consumers and the economy... That's our RegTech mission."*

Buoyed by government support and inspired by the leading example of the UK's Financial Conduct Authority, the Australian Securities and Investments Commission (ASIC) has eagerly promoted the development of RegTech in the financial services industry by, among other things, offering assistance to RegTech start-ups, and hosting a number of industry events such as ASIC's RegTech Showcase event, which was held in September 2017. ASIC has in particular expressed its excitement for RegTech's *"enormous potential to help organisations build a culture of compliance."*

For the reasons explained above, RegTech is here to stay and will continue to grow in importance and utility to business. Since RegTech will be directly relevant to many of our practices, in-house lawyers will be increasingly called upon

to advise on the potential benefits, impacts and implementation of RegTech solutions.

In addition to our traditional responsibilities of staying up-to-date with changes in the law, in-house lawyers should also keep abreast of the latest developments in RegTech. Not only because it will allow us to deliver maximum value when called upon to give advice on this subject, but because for reasons set out below, it will help us to adapt appropriately to meet the challenges to our profession caused by digital disruption.

It's been widely commented on in this, and other publications that new technology will have an increasingly disruptive effect on the legal profession, just as many other areas of the economy have already been disrupted. Technology will soon be able to do most of what lawyers can do. Law and computer code operate in fundamentally the same way – if x, then y. A series of rules, deductions and choices, all of which can be potentially automated by a clever piece of RegTech (or by its close cousin, 'LegalTech').

We're already seeing an impact. It was reported that from 2017 JP Morgan would be able to save 360,000 hours of paid legal work annually by using an artificial intelligence program to screen its commercial loan agreements. Scott Morrison imagines, perhaps scarily, that: *"The Holy Grail is when we start to actually write regulation and legislation in code. Imagine the productivity gains and compliance savings of instantaneous certified compliance..."* ASIC is working with the CSIRO specialist digital research unit, Data61 on how to achieve the Treasurer's dream.

While lawyers won't disappear anytime soon, the way we currently practice will certainly change. Rather than viewing this as a threat, in-house lawyers should see this as an opportunity. Computers will be able to take over the tedious, structured or repetitive tasks that require a lot of our time, such as research and simple drafting. Which means that our time can be freed up to put to better use on lateral thinking and solving problems at a strategic and commercial level, which is where our highest value lies. **a**