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# **Digital Finance, COVID-19 and Existential Sustainability Crises**

Setting the Agenda for the 2020's

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## Digital Finance, COVID-19 and Existential Sustainability Crises: Setting the Agenda for the 2020s

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*This paper examines how the digital financial infrastructure that emerged in the wake of the 2008 Global Financial Crisis is being tested and leveraged to meet some of the financial, economic and health challenges presented by the COVID-19 pandemic. The origins of the 2008 crisis and the current crisis are different: the 2008 crisis was a financial crisis that spilt over into the real economy, while COVID-19 is a health and geopolitical crisis spilling over into the real economy. As such, COVID-19 – a pandemic and an existential sustainability crisis – requires different approaches. This paper explores the role of digital finance in this context on two levels. At the macro level, it identifies how digital finance has been used to address areas of systemic risk and underpin wider financial stability. At the micro level, it illustrates how digital financial tools can address a range of emerging challenges particularly relating to recovery. COVID-19 experiences are driving forward a range of efforts to build better infrastructure to address future crises, in particular interoperable electronic payments systems (including central bank digital currencies and other forms of sovereign digital currency), sovereign digital identification (particularly in the context of market integrity and non face-to-face transactions), and use of technology for regulatory, supervisory and compliance purposes. At the same time, we argue that digitization generally and of finance in particular driven by the COVID-19 crisis – while providing effective tools to support the response – have also raised new challenges, particularly around forms of TechRisk arising from control and use of data from both state and non-state actors. Looking forward, these are among the most significant challenges for policy, law and regulation in the 2020s.*

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## I INTRODUCTION

The origins of the Global Financial Crisis of 2008 and the COVID-19 crisis of 2020 are very different and thus demand different responses and approaches: 2008 was a financial crisis that spilt over into the real economy.<sup>1</sup> COVID-19 as a pandemic is a health and geopolitical crisis – in fact an existential sustainability crisis – spilling over into the real economy, and with the risk of possible financial spillovers in turn worsening the human and economic impacts in a vicious spiral.

The COVID-19 pandemic has shaken nations around the world. It has tested their healthcare infrastructure, battered their economies, and left whole populations in fear and lockdown. This is a human health and sustainability crisis first and foremost. The human crisis includes the economic and social consequences of the pandemic, and these secondary implications will be felt for years to come. The United Nations estimates that the global economy contracted by 4.3% in 2020 due to the effects of the pandemic.<sup>2</sup> In sharp contrast, in 2009, following the 2008 Crisis, the global economy contracted by only 1.7%.<sup>3</sup> The pandemic's impact has been devastating in Asia Pacific,<sup>4</sup> Europe<sup>5</sup>, Africa and the Americas.<sup>6</sup> Its immediate impact on most developed countries has been massive, and its longer-term impact on the developing world, and in particular least developed countries<sup>7</sup> and indigenous communities,<sup>8</sup> may yet prove to be even greater,

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<sup>1</sup> Ross P Buckley and Douglas W Arner, *From Crisis to Crisis: The Global Financial System and Regulatory Failure* (Kluwer, 2011).

<sup>2</sup> United Nations, *World Economic Situation and Prospects 2021* (Report, 2021) viii, <[https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2021\\_FullReport.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2021_FullReport.pdf)>.

<sup>3</sup> Ibid.

<sup>4</sup> United Nations Economic and Social Commission for Asia and the Pacific, *Assessing the Impact of COVID-19 in Asia and the Pacific and Designing Policy Responses: An Excel-Based Model* (Manual, 14 November 2020) <<https://www.unescap.org/resources/assessing-impact-covid-19-asia-and-pacific-and-designing-policy-responses-excel-based>>; Motoko Rich, Hisako Ueno and Makiko Inoue, 'Japan Declares Emergency as Experts Fear Tip of the Iceberg', *The New York Times* (online, 8 April 2020) <<https://www.nytimes.com/2020/04/07/world/asia/japan-coronavirus-emergency.html>>.

<sup>5</sup> 'JRC Analyses COVID-19 Impact on Economy and Labour Markets to Help Guide EU Response', *European Commission* (Web Page, 3 August 2020) <<https://ec.europa.eu/jrc/en/news/jrc-analyses-covid-19-impact-economy-and-labour-markets-help-guide-eu-response>>; 'Italy, Spain See Steady Drop in COVID-19 Infections as France Records Deadliest Day', *SBS News* (online, 8 April 2020) <<https://www.sbs.com.au/news/italy-spain-see-steady-drop-in-covid-19-infections-as-france-records-deadliest-day>>.

<sup>6</sup> Lucia Mutikani, 'What to know about the report on America's COVID-hit GDP', *World Economic Forum* (Web Page, 31 July 2020) <<https://www.weforum.org/agenda/2020/07/covid-19-coronavirus-usa-united-states-economy-gdp-decline/>>; Marc Fisher, 'The U.S. death toll has reached 100,000', *The Washington Post* (online, May 27 2020) <<https://www.washingtonpost.com/graphics/2020/national/100000-deaths-american-coronavirus/>>.

<sup>7</sup> Dirk Zetzsche & Roberta Consiglio, One Million or One Hundred Million Casualties? – The Impact of the COVID-19 Crisis on the Least Developed and Developing Countries, Uni Luxembourg Law WPS 2020-008, <<https://ssrn.com/abstract=3597657> or <http://dx.doi.org/10.2139/ssrn.3597657>>.

<sup>8</sup> 'CDC data show disproportionate COVID-19 impact in American Indian/Alaska Native populations', Centers for Disease Control and Prevention (Web Page, 19 August 2020) <<https://www.cdc.gov/media/releases/2020/p0819-covid-19-impact-american-indian-alaska-native.html> ; [https://www.thelancet.com/journals/lanwpc/article/PIIS2666-6065\(20\)30007-9/fulltext](https://www.thelancet.com/journals/lanwpc/article/PIIS2666-6065(20)30007-9/fulltext)>.

given weaker healthcare systems and infrastructure,<sup>9</sup> and the dependency on global trade of many of these countries as either natural resource producers or ‘global workbenches’. Disparate impact in terms of race, poverty and inequality is being seen strongly in developed economies as well, with the wealthiest becoming even richer while the rest of the population is impacted disproportionately, and an ever widening gap between the wealthiest in developed countries and the rest of the world.

We examine here how the financial infrastructure – in particular digital financial infrastructure – that emerged in the wake of the 2008 Global Financial Crisis has been tested and is being leveraged to overcome both the immediate challenges of the pandemic and manage the longer-term economic impact. We explore some of the lessons arising from the use of digital financial platforms in the COVID-19 crisis, including strategies and tools. Our examples underscore the versatility and agility of financial technology (‘fintech’) and demonstrate how the digital financial infrastructure can be robust, resilient, and most importantly, responsive in the face of fluid and unpredictable events, thereby underpinning more resilient systems to address future crises, including the sorts of existential sustainability crises which are likely to become increasingly common across the coming decades.

In this rapidly evolving and unprecedented context, digital financial innovations are being relied upon at both the micro and macro levels to address everything from basic logistical means of transacting,<sup>10</sup> to the strategically important financial fundamentals<sup>11</sup> – and everything in between. These fundamentals include liquidity, systemic stability and the ability of the economy to weather unforeseen economic or geo-political shocks. The primary measure taken to combat the spread of COVID-19, ‘social distancing’, has dramatically further embedded digitization, e-commerce and fintech into modern life. Beyond behavioural adaptation, widespread exposure to the cost savings, convenience and hygiene associated with digital finance are consolidating fintech usage more broadly, with potentially important and enduring benefits for financial inclusion and sustainable development.<sup>12</sup> This can be seen particularly in the context of electronic payments.<sup>13</sup>

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<sup>9</sup> ‘COVID-19: Urgent Action Needed to Counter Major Threat to Life in Conflict Zones’, *International Committee of the Red Cross* (Web Page, 30 March 2020) <[icrc.org/en/document/covid-19-urgent-action-needed-counter-major-threat-life-conflict-zones](https://www.icrc.org/en/document/covid-19-urgent-action-needed-counter-major-threat-life-conflict-zones)>; ‘COVID-19: Effects in Developing Countries, Deans Discussion Harvard University’, *Harvard Kennedy School* (Web Page, 22 July 2020) <<https://www.hks.harvard.edu/more/about/leadership-administration/deans-office/deans-discussions/covid-19-effects-developing>>.

<sup>10</sup> Margaret Miller et al, ‘How Can Digital Financial Services Help a World Coping With COVID-19?’, *World Bank Blogs* (Blog Post, 3 August 2020) <<https://blogs.worldbank.org/psd/how-can-digital-financial-services-help-world-coping-covid-19>>.

<sup>11</sup> Jan Bellens et al, ‘How Banks Can Successfully Emerge From COVID-19’, *EY* (Web Page, 7 August 2020) <[https://www.ey.com/en\\_qa/banking-capital-markets/how-banks-can-successfully-emerge-from-covid-19](https://www.ey.com/en_qa/banking-capital-markets/how-banks-can-successfully-emerge-from-covid-19)>.

<sup>12</sup> Dirk A Zetsche, Ross P Buckley and Douglas W Arner, ‘FinTech for Financial Inclusion: Driving Sustainable Growth’, in Julia Walker, Alma Pekmezovic and Gordon Walker (eds), *Sustainable Development: Harnessing Business to Achieve the SDG’s through Finance, Technology and Law Reform* (Wiley, 2019) 179; Douglas W Arner et al, ‘Sustainability, FinTech and Financial Inclusion’ (2020) 21 *European Business Organisation Law Review* 7.

<sup>13</sup> Codruta Boar and Róbert Szemere, ‘Payments go (even more) digital’, Bank for International Settlements (Web Page, 2020) <[https://www.bis.org/statistics/payment\\_stats/commentary2011.htm](https://www.bis.org/statistics/payment_stats/commentary2011.htm)>.

Thus far, the digital financial infrastructure has performed resiliently and responsively. The reliability and consistency of this digital lifeline, should it continue to work well, is transforming fintech – especially electronic payments – from an entrepreneurial novelty to an indispensable element of modern life. At the same time, from late 2020 and into 2021, digitization of finance combined with massive amounts of central bank liquidity appears to be contributing to new asset price bubbles in the tech and e-commerce sectors around the world, increasing the potential for new financial stability risks: second order effects arising from the initial financial responses to the crisis in 2020.

## II The Four Level Interrelationships between Finance and the Real Economy

From a financial sector standpoint, the starting point in any crisis – be it a financial, economic or sustainability crisis – is to understand the situation and context, and, from there, to deploy appropriate strategies to prevent or mitigate the financial crisis while minimizing damage to the real economy and laying the foundations for a return to financial stability and sustainable development. In the wake of any crisis, legal and regulatory reforms will be necessary to address issues and lessons which arose, to enhance systems prior to the next test, whatever that might be.

The 2008 Crisis originated with a financial crisis.<sup>14</sup> This in turn impacted the real economy as financial resources became unavailable to support economic activity. Conceptually, the ‘real economy’ is distinct from the financial economy in that it refers to the physical production of goods and delivery of services. The ‘financial economy’, in contrast, refers to financial transactions entered into to create wealth. This damage to the real economy, therefore, in turn worsened financial sector issues (through both liquidity and solvency channels) causing a dangerous spiral (including spillovers to various governments around the world).<sup>15</sup>

In 2020, the triggering events were different. The situation initially was primarily the result of two shocks. Firstly, a **health and existential sustainability crisis**: the COVID-19 coronavirus pandemic starting at the end of 2019.<sup>16</sup> Secondly, a **geopolitical crisis**:<sup>17</sup> the pandemic has become a domestically politicized issue in many parts of the world feeding into international trade relations as the reverberations of the pandemic widen existing fissures in global trade, economic interactions and

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<sup>14</sup> The financial crisis began particularly in wholesale interbank markets resulting from loss of transparency, trust and confidence among major institutional players as a result of widely spread credit losses from securitisation resulting in a liquidity and financial solvency crisis: Buckley and Arner (n 1); Laura Chiamonte, *Bank Liquidity and the Global Financial Crisis* (Palgrave Macmillan, 2008) 1.

<sup>15</sup> Ross P Buckley, Emiliios Avgouleas and Douglas W Arner, ‘Three Major Financial Crises: What Have We Learned?’, in Douglas W Arner et al (eds), *Systemic Risk in the Financial Sector: Ten Years after the Great Crash* (CIGI Press, 2019) 47.

<sup>16</sup> ‘Rolling Updates on Coronavirus Disease (COVID-19)’, *World Health Organization* (Web Page, 9 April 2020) <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>>.

<sup>17</sup> Florence Gaub and Lotje Boswinkel, ‘The Geopolitical Implications of the COVID-19 Pandemic’, *Publications Office of the EU* (Web Page, 10 September 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/603511/EXPO\\_STU\(2020\)603511\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/603511/EXPO_STU(2020)603511_EN.pdf)>.

geopolitics, including in the context of health, financial, economic and vaccination cooperation and competition.<sup>18</sup> In addition to existing trade tensions between the US, China, EU, UK and Canada, among others, the trade relationship between Australia and China, for example, has deteriorated greatly following the Australian government calling for a global inquiry into the origins of the pandemic.<sup>19</sup> Similarly relations between China and India have deteriorated, resulting in an increasingly competitive and tense environment.

While the most significant impact of the COVID-19 pandemic is human, the immediate consequences of individual quarantine measures and lockdowns are felt through supply chains (ie. reduced operation of factories and logistic networks), as well as through demand channels (ie. reduced individual and business appetite for consumption, and prohibitions on certain services such as travel and hospitality services) globally and locally.<sup>20</sup> Furthermore, uncertainties in terms of human casualties and economic damage are severely reducing trust within and between economic and political actors.<sup>21</sup>

As the economic and human toll increases, so does the strain on the financial sector, which remains vital to direct financial resources to address the crisis and support recovery. In order to allay their uncertainties, it seems most economic agents initially sought to maximize their access to cash<sup>22</sup> – albeit so far mostly in digital form as opposed to physical cash or gold – with a rush for liquidity around March 2020. Largely as a result of post-2008 financial regulatory reforms and technological developments,<sup>23</sup> the financial sector was able to withstand these initial challenges and then provide a conduit for liquidity and financial support throughout economies across the world. Nonetheless, concerns have emerged in some quarters about the necessity of central bank support in the context of preventing a systemic financial failure. From our standpoint however – while official liquidity support was necessary, we view this as an essential public good in the context of a market-based financial system, which – on balance – withstood the onslaught of a global panicked rush for liquidity remarkably well and far better than in 2008.

Thus, while the impact has not fallen mainly on the financial sector, maintaining the robustness and effectiveness of the financial sector is central to the overall battle against COVID-19. Unlike 2008, the COVID-19 crisis did not originate in the financial sector,

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<sup>18</sup> Kamran Abbasi, 'Covid-19: Politicisation, "Corruption," and Suppression of Science' (2020) 371 *BMJ* <<https://www.bmj.com/content/371/bmj.m4425.full>>.

<sup>19</sup> Eleanor Albert, 'China-Australia Relations Continue Their Downward Spiral' *The Diplomat* (online, 4 November 2020) <<https://thediplomat.com/2020/11/china-australia-relations-continue-their-downward-spiral/>>.

<sup>20</sup> Impact on Workers of COVID-19 Is 'Catastrophic': ILO', *UN News* (Web Page, 23 September 2020) <<https://news.un.org/en/story/2020/09/1073242>>.

<sup>21</sup> Bongoh Kye and Sun-jae Hwang, 'Social Trust in the Midst of Pandemic Crisis: Implications from COVID-19 of South Korea' (2020) 68 *Research in Social Stratification and Mobility* 100523 <<https://www.sciencedirect.com/science/article/pii/S0276562420300597>>.

<sup>22</sup> Jared Lynch, 'Cash is King as Dividends Ditched, Costs Slashed', *The Australian* (online at 18 March 2020) <<https://www.theaustralian.com.au/business/cash-is-king-as-dividends-ditched-costs-slashed/news-story/e1268df30778886c05b617f09610f1e7>>.

<sup>23</sup> See Douglas W Arner, Janos Barberis and Ross P Buckley, 'The Evolution of FinTech: A New Post-Crisis Paradigm?' (2016) 47(4) *Georgetown Journal of International Law* 1271 ('Evolution of FinTech').

but for the financial sector to operate efficiently it requires trust between actors and certainty in economic outlook. Looking forward, both of these elements face challenges given the economic and human impact of the crisis.

In the context of non-synchronous transactions where payments and performance do not coincide, trust and certainty are the transmission mechanisms between the real economy and the financial markets. Companies, governments and individuals may thus face potential second order challenges stemming from this lack of confidence in the form of funding and access to finance (ie. liquidity) and these will in turn impact the financial sector. A weakened financial sector will be limited in its capability of financing the real economy, in turn worsening business and human outcomes, and potentially thereby starting a vicious downward spiral.<sup>24</sup>

Targeted intervention to avert such outcomes highlight the central role that digital financial channels can play in alleviating prevailing ills. From this perspective, we identify four levels of intervention, focusing on the role of digital finance, from Macro (infrastructure strain) to Micro (financial health).

The **first level**, from the standpoint of the financial sector, focuses on the infrastructure of the financial system, particularly payment systems and securities markets (for both companies and governments). One of the greatest concerns is failure in this core infrastructure, which is almost entirely digital. This digital plumbing lies at the core of any financial system, domestic or international.

To the extent this digital financial infrastructure functions as intended, it underpins the financial sector in performing its key functions of liquidity management and financial resource allocation, which are necessary to support economic activity and sustainable development.<sup>25</sup> The pandemic and its consequences are revealing whether authorities are prepared in both a regulatory and technical context to manage the fallout of this crisis. Since 2008, governments have placed considerable attention on these key areas to deal with the ordinary economic ebbs and flows. How those regulations, supervisory postures and contingency plans have held up and continue to hold up will be one of the most important lessons of the COVID-19 crisis.<sup>26</sup>

Monitoring and ensuring crisis resilience of these core infrastructures is essential, as the consequences of failure in times of crisis can be devastating. For instance, both medical and security personnel, as well core IT and financial sector staff and infrastructure, are all crucial for the functioning of society as well as the economy and need to be given priority in any emergency. At the same time, it may be necessary in some circumstances to respond to market volatility by calling trading halts or reviewing trading halt trigger mechanisms, in the same way that lockdowns and triage have also proven necessary to avoid system overload and potential failure. In the financial sector context, these however should ideally be done within specific contexts (eg. in the case of stock exchanges) and for limited periods.

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<sup>24</sup> See Douglas Arner, *Financial Stability, Economic Growth and the Role of Law* (Cambridge, 2007); Ross P Buckley & Douglas Arner, *From Crisis to Crisis: The Global Financial System and Regulatory Failure* (Kluwer, 2011).

<sup>25</sup> Zetsche, Buckley and Arner (n 13).

<sup>26</sup> International Monetary Fund, *A Year Like No Other*, (Annual Report, 2020) 20  
<<https://www.imf.org/external/pubs/ft/ar/2020/eng/downloads/imf-annual-report-2020.pdf>>



Cybersecurity has emerged as a major source of operational, financial, systemic and national security risk. Before the pandemic, cyberrisk was already being seen by some as being larger than credit and financial risk, particularly as most firms struggled to deal with it. In the current situation where companies are rapidly moving staff from secure office or government networks to home networks, opportunities for potential breaches by malicious actors increase markedly as do the risks of technical failures.<sup>27</sup> We categorize these as TechRisks.<sup>28</sup>

The **second level**, from the standpoint of liquidity, focuses on identifying where solvency problems in both the real economy (individuals, firms, governments) and the financial sector (bank runs, etc) may emerge and deploying financial resources where possible to avoid the emergence of solvency problems as a result of lack of liquidity.

At the heart of any financial sector are wholesale electronic systems which must be carefully monitored for stress by domestic liquidity providers (generally the central bank). In times of crisis, expansive credit lines from major central banks and assistance from international organizations can be essential. This is particularly true if consumers follow rumours on the crisis' impact on financial institutions and seek to withdraw cash, prompting a banking crisis on top of a health and economic crisis. A similar phenomenon is mirrored in the government sector where mass and rapid unemployment may result in 'welfare runs' (as seen in Australia in the early days of the pandemic).<sup>29</sup> Government welfare services can become quickly inundated by support seekers thus overstretching the capacity of the public service<sup>30</sup> and immediately skewing fiscal projections.<sup>31</sup>

Yet liquidity supply alone will not ensure demand in the real economy if consumers choose to save rather than spend or if the choice of goods remains limited (as it will likely be increasingly due to state intervention in order to prevent panic buying in the face of on-going lockdown policies). Where choice of goods is limited, excess liquidity may well translate into higher prices for the few goods available. At the same time, if consumers choose not to spend, the result may be the opposite: deflationary instead of inflationary. This may be where new digital financial products may help, discussed below in section III.A.4.

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<sup>27</sup> See Frank Adelman et al, 'Cyber Risk and Financial Stability: It's a Small World After All' (Staff Discussion Notes No 2000/007, International Monetary Fund, 7 December 2020) 5 <<https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2020/12/04/Cyber-Risk-and-Financial-Stability-Its-a-Small-World-After-All-48622>>.

<sup>28</sup> Ross P Buckley et al, 'TechRisk' [2020] *Singapore Journal of Legal Studies* 1.

<sup>29</sup> 'If You Need a Payment – Coronavirus (COVID-19)', *Australian Government Services Australia* (Web Page, 9 April 2020) <<https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19/if-you-need-payment-coronavirus-covid-19>>.

<sup>30</sup> Luke Henriques-Gomes, 'Newly Unemployed Australians Queue at Centrelink Offices as MyGov Website Crashes Again', *The Guardian* (online, 24 March 2020) <<https://www.theguardian.com/australia-news/2020/mar/24/newly-unemployed-australians-queue-at-centrelink-offices-as-mygov-website-crashes-again>>.

<sup>31</sup> John Kehoe, '\$60b JobKeeper Error Caused by Pandemic Fears' *Australian Financial Review* (online, 25 May 2020) <<https://www.afr.com/policy/economy/what-caused-the-60b-jobkeeper-blunder-20200522-p54vou>>.

The **third level**, from the standpoint of solvency of financial institutions, focuses on having closer to real-time reporting in order to coordinate timely responses: to be able to identify emerging solvency issues at as early of a stage as possible to prevent or address excessive buildup. Batch reporting of financial data, for both listed and private companies, are retrospective and fail to capture dynamic financial changes. This pertains, for instance, to all annual, quarterly or monthly reports required by financial regulators. These numbers, once received by decision makers, are outdated and inadequate for steering an economy through a crisis.

Regulatory technology ('RegTech') and supervisory technology ('SupTech') systems provide important tools in this context.<sup>32</sup> For example, historically, on-site supervision has played a central role in financial supervision. During COVID-19 however this has become impossible, creating the necessity for non-face-to-face interactions not only between financial institutions and their customers but also between financial institutions and regulators (SupTech) and between employees of financial institutions including their compliance teams as a result of working from home (RegTech). While digital regulatory reporting was already developing rapidly – particularly in the US and EU<sup>33</sup> – COVID-19 has increased attention globally.<sup>34</sup> In addition, technology is playing an important role in health monitoring and compliance – another form of RegTech / SupTech albeit outside finance: in countries such as Qatar, electronic ID repositories underpin all COVID-19 testing and, currently, the streamlining of national vaccination strategies. In the present crisis, concerns are not emanating from financial institutions but rather from the potential impact of the crisis on governments, firms and individuals and potential knock-on impacts on the financial sector.<sup>35</sup> Given the very rapid change in economic conditions, systems for collecting and analysing data and its impact through RegTech and SupTech can offer more granular and real time information about financial health.<sup>36</sup> Through the same infrastructure, if in place for longer periods, regulators could require systemically significant institutions to report core data that policy makers can subsequently use for economic projections and crisis modelling.<sup>37</sup> Regrettably, while RegTech and SupTech systems could provide vital tools in this

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<sup>32</sup> See Financial Stability Board, *Regulatory and Supervisory Issues Relating to Outsourcing and Third-Party Relationships: Discussion Paper* (Consultation, 9 November 2020) 8 <<https://www.fsb.org/2020/11/regulatory-and-supervisory-issues-relating-to-outsourcing-and-third-party-relationships-discussion-paper/>>.

<sup>33</sup> See Douglas W Arner, Janos Barberis and Ross P Buckley, 'FinTech, RegTech and the Reconceptualization of Financial Regulation' (2017) 37 *Northwestern Journal of International Law and Business* 371 ('FinTech, RegTech and Reconceptualisation'); Dirk A Zetzsche, Douglas W Arner, Ross P Buckley, Rolf H. Weber, 'The Future of Data-Driven Finance and RegTech: Lessons from EU Big Bang II' 25(2) *Stanford Journal of Law, Business & Finance* 245.

<sup>34</sup> See 'The Use of Supervisory and Regulatory Technology by Authorities and Regulated Institutions: Market developments and financial stability implications', Financial Stability Board (Report, 9 October 2020) <<https://www.fsb.org/wp-content/uploads/P091020.pdf>>.

<sup>35</sup> Douglas W Arner, Emiliios Avgouleas and Evan Gibson, '[Financial Stability, Resolution of Systemic Banking Crises and COVID-19: Toward an Appropriate Role for Public Support and Bailouts](#)' (Working Paper No 44, University of Hong Kong Faculty of Law, 2020).

<sup>36</sup> Douglas W Arner, Janos Barberis and Ross P Buckley, *The RegTech Book* (Wiley, 2019) ('RegTech Book'); Arner, Barberis and Buckley, 'FinTech, RegTech and Reconceptualization' (n 35) 375; Luca Enriques, 'Financial Supervisors and Regtech: Four Roles and Four Challenges' (2017) 53 *Revue Trimestrielle de Droit Financier*.

<sup>37</sup> Sylvia Shepperson, 'RegTech the Smart Future for Model Risk Management', *FinExtra* (Blog Post, 21 June 2018) <<https://www.finextra.com/blogposting/15496/regtech---the-smart-future-for-model-risk-management>>.

respect, they cannot be put in place quickly due to the disruption typically associated with upgrading legacy systems making the implementation of RegTech and SupTech solutions difficult amidst a major crisis. However, going forward, this is a major opportunity for legal and regulatory reform.

The **fourth level**, from the standpoint of the financial health of individuals, businesses and governments, focuses on leveraging existing fintech solutions. These solutions are primarily digital payments, digital commerce related (with respect to delivery services for necessities), and digital funding avenues (with respect to rapidly growing sectors such as online education). The increased reliance on grocery and food delivery services<sup>38</sup> has proved to be both a blessing and a curse. On the one hand, these services enable physical distancing and self-isolation. If these food delivery systems are unable to address the increased demand, however, consumers may lose faith in such systems and panic buying in physical supermarkets can result. Additionally, if these delivery systems are poorly designed or implemented or if delivery staff are undertrained or over-worked, these systems can (and have) put workers at risk with tragic consequences.<sup>39</sup> Communication through online learning, tutoring, education and marketing has evolved with incredible rapidity across the world and much of this will not be reversed even after the pandemic is resolved. This trend will likely continue requiring further financial resources to support such technological infrastructure growth.<sup>40</sup>

At the core is financial stability. The financial system has to be regulated and supported to function properly in order to achieve its core functions of supporting economic and other activities; and financial crises need to be avoided, if possible, or ameliorated when they do occur.<sup>41</sup> Resulting from regulatory reforms in the wake of 2008, and the emergence of fintech and more generally the digital transformation of finance over the past decade, the impact of the pandemic on the financial sector has not amplified the COVID-19 health crisis. In fact, digital finance is emerging as a one of the pillars supporting financial stability and underpinning the economic and social responses to the crisis.

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<sup>38</sup> Marco Chiappetta, 'Uber Eats Demand Soars Due to COVID-19 Crisis', *Forbes* (online, 25 March 2020) <<https://www.forbes.com/sites/marcochiappetta/2020/03/25/uber-eats-demand-soars-due-to-covid-19-crisis/#3fe5bd54580c>>; Mary Hanbury, 'UK Grocery Chains Add Hundreds of Thousands of Delivery Slots for Online Orders but Admit that They Can't Keep up with Demand', *Business Insider UK* (online, 8 April 2020) <<https://www.businessinsider.com/tesco-ocado-sainsburys-cant-keep-up-with-surging-demand-amid-coronavirus-4?r=AU&IR=T>>.

<sup>39</sup> Naaman Zhou 'NSW Government Announces Taskforce to Investigate Food Delivery Deaths', *The Guardian* (online, 24 November 2020) <<https://www.theguardian.com/australia-news/2020/nov/24/food-delivery-driver-killed-in-sydney-is-the-fifth-death-in-two-months>>; Amien Essif, 'Pressure Mounts on Food Delivery Workers amid COVID-19', *Deutsche Welle* (online, 23 March 2020) <<https://www.dw.com/en/pressure-mounts-on-food-delivery-workers-amid-covid-19/a-52848505>>; Alex Hern, 'Amazon Sales of 'Non-essentials' Hit by French Court Ruling', *The Guardian* (online, 16 April 2020) <<https://www.theguardian.com/world/2020/apr/15/amazon-sales-non-essentials-french-court-ruling-union>>.

<sup>40</sup> Fergus Hunter and Jordan Baker, 'Uni Bosses Predict Permanent Shift to Online Learning but Not a 'Full-Scale Revolution'', *The Sydney Morning Herald* (online, 11 April 2020) <<https://www.smh.com.au/politics/federal/uni-bosses-predict-permanent-shift-to-online-learning-but-not-a-full-scale-revolution-20200410-p54iv7.html>>.

<sup>41</sup> Douglas W Arner, *Financial Stability, Economic Growth and the Role of Law* (Cambridge University Press, 2007).

### III Reducing Economic Impact: Maximizing Digital Channels

Digital finance offers potentially important tools in directing resources quickly and efficiently to the stakeholders that need them the most. In particular, we focus on the strategies and solutions to mitigate economic and human impact.

In an existential sustainability crisis such as the COVID-19 pandemic, the initial economic, social, human and financial impact results from short-term factors. As a crisis extends longer in time, these can, at some point, turn into structural factors, which in turn require different strategies, and this in fact seems to be happening in a number of areas as the COVID-19 pandemic has evolved from a short-term shock to a longer term battle. Digital financial tools are capable of achieving traditional crisis management objectives with greater potency and accuracy than was historically possible.<sup>42</sup> This may well be one advantage of governments in the current crisis not previously available. The data-driven nature of digital finance provides policymakers with the ability to structure and scale stimulus with precision.<sup>43</sup> The potential benefits are obviously apparent. The core questions, however, are whether the information is available, readable and in front of the decision makers and if the technical capability is sufficiently mature to meet the challenge. Consolidating, curating and monitoring collected information is a core pillar of crisis-response that may well be tragically revealed to be lacking in the current pandemic (and the need for effective systems to do this may well prove to be one of the major policy lessons from this pandemic).

#### A Public and Private Directed Financial Assistance

In times of upheaval, people need the means to secure the essentials of food, shelter and clothing. As long as basic market conditions hold, and the situation has not deteriorated into riots and looting, commercial exchange and public assistance will remain the only legitimate ways to secure such essentials. Digital financial platforms, and digital wallets in particular, can deliver funds to those in need rapidly and accurately. In recent years, financial technology has spearheaded the financial inclusion agenda by enabling more people than ever before to access financial services through their mobile devices in China, India and large parts of Africa. In terms of publicly directed assistance and crisis fallout alleviation, the dynamics of the traditional public/private divide are also being witnessed upon a new axis. That new dimension is one of incumbent banks or financial institutions (Big-Fin) versus giant technology firms (Big-Tech) moving into the financial market.

In the context of China for example, banks have been criticized for their slow responses to ease the financial burden on virus victims.<sup>44</sup> Although several Chinese banks<sup>45</sup>

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<sup>42</sup> Arner, Barberis and Buckley, 'Evolution of FinTech (n 24).

<sup>43</sup> Jessica Kent, 'Big Data Analytics Show COVID-19 Spread, Outcomes by Region', *Health IT Analytics* (Web Page, 21 September 2020) <<https://healthitanalytics.com/news/big-data-analytics-show-covid-19-spread-outcomes-by-region>>.

<sup>44</sup> Val Law, 'Big Tech Beat Banks in COVID-19 Response', *Finews* (online, 25 February 2020) <<https://www.finews.asia/finance/31047-big-techs-corona-crisis-covid19-hong-kong-china-singapore-response-fintech-alibaba-boc-hsbc-stanchart-axa?start=1>>.

<sup>45</sup> Chad Bray and Enoch Yiu, 'Hong Kong Banks to Offer Relief on Mortgages, Credit Cards, Corporate Loans as Coronavirus Outbreak Weighs on Economy', *South China Morning Post* (online, 6

responded to the crisis with mortgage relief, credit card payment holidays and corporate loan readjustments, they have been criticized for taking too long to act. In many other major economies, it has taken even longer for banks and the financial sector to react – and they have done so only after the government has taken the lead.<sup>46</sup> In the EU, this has come in the form of the European Council amending bank holding requirements to encourage and facilitate lending.<sup>47</sup> These changes to bank rules are in addition to a multi-trillion Euro economic rescue package<sup>48</sup> and the very large crisis support and large economic stimulus packages within EU member states, particularly in Germany.<sup>49</sup> While this European initiative and the American relief measures (the ‘CARES Act’) came within ‘weeks and months’ of discovery of the virus, global BigTech companies, such as Amazon and Alibaba, have accustomed the public to rapid and customized service in nearly all realms of digital life.<sup>50</sup> We now live in a world of on-demand entertainment and Amazon Prime timeframes<sup>51</sup> in which these government and bank response-times appear too slow. Whether these government response times were the consequence of cautious policy evaluation or decision-making or logistical bottlenecks, there is a role for more nimble fintech firms to support governments – at least in the rollout phase of policy implementation.<sup>52</sup>

As noted by finews.asia:

As more technology companies gain digital banking licenses, banks can no longer operate as they used to. They also cannot claim to be the source of vital 'life-lines' for their customers, if they do not demonstrate the timeliness of actions during critical times. If incumbent banks want to have a place in their clients' hearts, they must

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February 2020) <<https://www.scmp.com/business/banking-finance/article/3049396/hong-kong-banks-offer-relief-mortgages-credit-cards>>.

<sup>46</sup> David Taylor, ‘The Big Four Banks are Letting Borrowers Hit Pause on their Payments, But This Is No Mortgage Holiday’, *ABC News* (online, 21 March 2020) <<https://www.abc.net.au/news/2020-03-21/mortgage-pause-coronavirus-nab-commonwealth-anz-westpac/12076690>>.

<sup>47</sup> ‘COVID-19: Council Adopts Exceptional Rules To Facilitate Bank Lending in the EU’, *Council of the European Union* (Web Page, 24 June 2020) <<https://www.consilium.europa.eu/en/press/press-releases/2020/06/24/covid-19-council-adopts-exceptional-rules-to-facilitate-bank-lending-in-the-eu/>>.

<sup>48</sup> ‘COVID-19: The EU's Response to the Economic Fallout,’ *Council of the European Union* (Web Page, November 2020) <<https://www.consilium.europa.eu/en/policies/coronavirus/covid-19-economy/>>.

<sup>49</sup> See ‘Protective Shield to Manage the Coronavirus Pandemic’, *Federal Ministry of Finance* (Web Page, November 2020) <<https://www.bundesfinanzministerium.de/Web/EN/Issues/Priority-Issues/Corona/corona.html#:~:text=The%20protective%20shield%20to%20manage,as%20of%2017%20November%202020>>; ‘Emerging From the Crisis with Full Strength’, *Federal Ministry of Finance* (Web Page, 4 June 2020) <<https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Public-Finances/Articles/2020-06-04-fiscal-package.html>>.

<sup>50</sup> Zetsche, Buckley and Arner (n 12) 191-192.

<sup>51</sup> Brian Solis, ‘Impatience Is a Virtue: How the On-Demand Economy is Making Mobile Consumers Impatient’, *Forbes* (online, 20 November 2017) <<https://www.forbes.com/sites/briansolis/2017/11/20/impatience-is-a-virtue-how-the-on-demand-economy-is-making-mobile-consumers-impatient/#135bde70344c>>.

<sup>52</sup> See Dariusz Wójcik and Stefanos Ioannou, ‘COVID-19 and Finance: Market Developments So Far and Potential Impacts on the Financial Sector and Centres’ (2020) 111(3) *Tijdschrift voor economische en sociale geografie* 387, 395.

respond in the way that big techs do, and see themselves as part of the ecosystems they serve.<sup>53</sup>

Many governments around the world have announced direct government stimulus packages to limit broad economic hardship and avert a sharp economic downturn. Some of these programmes, such as Australia's 'JobKeeper' program, are premised on detailed information cross-referenced with other data points.<sup>54</sup> As evidenced by the unprecedented global government stimulus packages, policymakers acknowledge the pandemic will result in a broad economic tsunami rather than disruption in only certain limited sectors (ie travel, hospitality). Many government initiatives including those seeking to ensure sufficient liquidity to support markets, instil business and consumer confidence (or at least allay fear) and stimulate demand.

In addressing the economic impact, the starting point is to identify market constraints and those groups most likely to be impacted. Effective policies and public programmes require sufficient calibration to target supply side obstacles in the provision of those essential needs that underpin social cohesion (food security, hygiene and medical supplies), in unison with stimulating aggregate demand. These targeted measures will seek to address issues relating to liquidity (temporary loss of income, business etc) and solvency. Digital finance offers important tools.

Impact has been widespread across individuals, SMEs, larger firms and public institutions (such as hospitals).<sup>55</sup> Impact on governments and the financial sector is so far limited but both can be expected to increase dramatically the longer the crisis continues as tax revenues, in particular, fall precipitately, and/or as non-performing loan volumes increase.

In addition to providing mechanisms for monitoring financial and economic conditions, digital finance offers the potential to directly target financial resources rapidly to those experiencing the greatest impact. The combination of digital identity frameworks and widespread availability of financial and mobile money accounts along with interoperable electronic payment systems provide great potential for delivering

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<sup>53</sup> Law (n 46). However, there have been indications that consumer demand has slowed during the COVID-19 pandemic – see Johannes Ehrentraud, Denise Garcia Ocampo and Camila Quevedo Vega, 'Regulating fintech financing: digital banks and fintech platforms' (Financial Stability Institute Insights No 27, Bank for International Settlements, 27 August 2020) 4 <<https://www.bis.org/fsi/publ/insights27.htm>>.

<sup>54</sup> Such as: (1) How long an employee has been in their position (must be at least 1 year); (2) turnover thresholds of employers (under or over \$1 billion); (3) Percentage of business downturn since 1 March 2020 (under \$1 billion must be at least 30% downturn in turnover and over \$1 billion – 50% downturn: 'JobKeeper Payments for Employers and Employees', *Australian Government Business* (Web Page, 20 April 2020) <<https://www.business.gov.au/risk-management/emergency-management/coronavirus-information-and-support-for-business/jobkeeper-payment>>.

<sup>55</sup> Michaela Boland, 'Coronavirus Has Shut Down Australia's Arts Industry but Artists Say the Government Has Ignored Them', *ABC News* (online, 8 April 2020) <<https://www.abc.net.au/news/2020-04-08/arts-sector-say-need-emergency-funding-to-survive-shutdown/12130398>>; Jade Macmillan, 'Arts Industry to Receive \$250 million Coronavirus Rescue Package From Federal Government', *ABC News* (online, 25 June 2020) <<https://www.abc.net.au/news/2020-06-25/arts-industry-to-receive-250-million-coronavirus-rescue-package/12390282>>; 'A Look at the Hospitals Battling Coronavirus Around the Globe', *ABC News* (online at 3 April 2020) <<https://www.abc.net.au/news/2020-04-03/look-at-the-hospitals-around-globe-coronavirus-covid-19/12117594>>.

resources directly across an entire society.<sup>56</sup> In countries where such systems are in place, they can provide the foundations for the design of appropriate programmes and the delivery of financial resources using algorithms prioritizing different factors such as age, health, social commitment, professional qualifications, and others. For the time being, at least, it appears the politics surrounding these types of social programmes and assessments are less polarized than would normally be the case, and more conciliatory.

Governments, NGOs and international organizations have to work with payment, financial and telecommunications providers to use whatever resources are available in terms of rapid targeted delivery. Cheques mailed over a period of months clearly lack the desired level of effectiveness.

The table below sets out a sample of digital tools available in various countries, how they may be relevant and whom they could be used to assist.

<b>Tools &amp; Examples</b>			
<i>Tools</i>	<i>Example</i>	<i>Relevance</i>	<i>Beneficiary</i>
<b>Digital Identity</b>	Aadhaar	Identification of individual health status	Gov / Public
<b>Transfer</b>	e-Tunai Rakyat	Instant disbursement of fund to beneficiary in closed loop	Public / SME
<b>Peer-to-Peer</b>	Lending Club	Direct lending origination & ROI above central banks	SME / Public
<b>Crowdfunding</b>	GoFundMe / Kickstarter	Pre-finance products using public support	SME / Public
<b>Invoice factoring</b>	Funding Societies	Unlocking future income to limit liquidity issues	SME
<b>AML / KYC</b>	ComplyAdvantage	Scalable identification of source of fund of micro-donation	NGO
<b>InsurTech</b>	Ping An	Shorter reimbursement of cost to provider / claimant	Public / Hospitals
<b>Sharing economy</b>	Uber / Grab / Gojek	Mobilize under-utilized assets & co-ordinate resources	Gov / SME

<sup>56</sup> Douglas W Arner, Ross P Buckley, Dirk A Zetsche and Ghiyazuddin Mohammad, *FinTech for Financial Inclusion: A Framework for Digital Financial Transformation* (Special Report, Alliance for Financial Inclusion / Group of 24, September 2018) (*'FinTech for Financial Inclusion Framework'*); Douglas W Arner et al, 'The Identity Challenge in Finance: From Analogue Identity to Digitized Identification to Digital KYC Utilities' (2019) 20 *European Business Organisation Law Review* 55 (*'Identity Challenge in Finance'*).

For SMEs, short term tools include the capacity to unlock future income by looking at invoice factoring solutions. However, this requires digitization of invoices, which might not be commonplace in developing markets.<sup>57</sup> Moreover, in developed countries, many businesses have lost all future income due to the cessation of client orders.<sup>58</sup> Another tech approach heavily reliant on current and accurate information includes strategic cash injections aimed at businesses to avoid mass unemployment, loss of infrastructure and deterioration of workforce skills, thus preserving readiness for a rapid kickstart as the health crises passes. For instance, states could rely on tax authorities to trigger reverse transactions based on the latest VAT, corporate tax or income / salary tax records. Certain types of businesses may also be suitable for crowdfunding (see below). Governments that have at various times limited the use of crowdfunding platforms in their jurisdictions could support suitable campaigns by officially declaring their conditional regulatory blessing.

## 1 Digital Identity

Digitally identifying people by connecting to official repositories of identity data will continue to grow in importance. This can enable governments to implement remedial policies particularly by direct fiscal assistance. The financial crisis of 2008 saw substantial resources in some jurisdictions wasted through the misallocation of stimulus payments to deceased or non-existent citizens.<sup>59</sup> Digital identity verification and authentication should ensure that only intended recipients receive stimulus payments. The threat of fraud and identity theft can be greatly minimized through the strengthening and support of digital identity infrastructure.<sup>60</sup> It is important to note however, that authentication and verification of an identity via a digital channel should be the focus, and not the creation of separate ‘digital identities’ or avatars. As a result of the necessity of non-face-to-face on-boarding and other activities, COVID-19 has dramatically highlighted the importance and role of sovereign digital identity systems, particularly in for constraining money laundering and terrorist financing.

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<sup>57</sup> Financial Stability Board, *BigTech firms in finance in emerging market and developing economies* (Report to the G20, 12 October 2020) 7-8 <<https://www.fsb.org/2020/10/bigtech-firms-in-finance-in-emerging-market-and-developing-economies/>>.

<sup>58</sup> ‘Business Impact of COVID-19 Survey (BICS) results’, *Office for National Statistics* (Web Page, 2020) <<https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessimpactofcovid19surveybicsresults>>;

‘Business Insights and Impacts on the UK: 19 November 2020’, *Office for National Statistics* (Web Page, 19 November 2020) <<https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/coronavirusandtheeconomicimpactsoneuk/latest>>.

<sup>59</sup> Bonnie Malkin, ‘Thousands of Dead Australians Get \$900 Stimulus Cheques’, *The Telegraph* (online, 28 May 2009) <<https://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/5397922/Thousands-of-dead-Australians-get-900-stimulus-cheques.html>>.

<sup>60</sup> Arner, Buckley and Zetzsche, *FinTech for Financial Inclusion Framework* (n 58); Arner et al, ‘Identity Challenge in Finance’ (n 58).



## 2 Behaviour Management

The uncharacteristic grocery store panics that have been witnessed in numerous developed economies are in many cases products of the digital dissemination of information. The dissemination of 'fake news' and misinformation through social media has been an issue of international significance for several years.<sup>61</sup> The overlap between social media and digital finance has been growing with services such as WhatsAppPay and WeChatPay emerging as extensions of popular messaging platforms. As such payment platforms develop further and become more widely adopted, this overlap creates an opportunity for the correlation of message dissemination patterns with purchasing behaviour, potentially signalling early-stage panic shopping and even pinpointing the products the panic focuses upon (hand sanitizer, toilet paper, pasta etc).<sup>62</sup>

The social distancing and quarantine policies that have been adopted in many parts of the world have also seen a massive increase in e-commerce. The use of digital platforms to shop, pay and organize delivery of all types of goods grew exponentially across 2020.<sup>63</sup> Depending on how long these policies remain in place, and how well the delivery services work, they will evoke behavioural and purchasing pattern change. A 2010 University College of London psychology study concluded it takes 66 days to create a habit.<sup>64</sup> What begins as a temporary lifestyle change, given enough time, can become a new daily norm. Many of these behavioural changes will stick.

Digital purchasing platforms are being used to limit the freedom of shoppers to bulk buy through implementing quantity quotas. The growth in and sophistication of app-based and online budgeting tools has seen the potential of identifying and categorizing financial transactions improve remarkably in recent years. Open banking platforms that provide third parties with customer banking information could also be leveraged to identify purchase behaviour, and aggregate data for panic identification and quota implementation. As Artificial Intelligence ('AI') analytics develop, such sources of

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<sup>61</sup> Kalinga Seneviratne, *Myth of 'Free Media' and Fake News in the Post-Truth Era* (Sage, 2020) 232 ff.

<sup>62</sup> Kiran Parashar, 'WhatsApp Forward Causes Panic Buying in Bengaluru', *The Times of India* (online, 11 April 2020) <<https://timesofindia.indiatimes.com/city/bengaluru/whatsapp-forward-causes-panic-buying-in-bengaluru/articleshow/75089988.cms>>; 'WHO Health Alert brings COVID-19 facts to billions via WhatsApp', *World Health Organisation* (Web Page, 21 August 2020) <<https://www.who.int/news-room/feature-stories/detail/who-health-alert-brings-covid-19-facts-to-billions-via-whatsapp>>.

<sup>63</sup> For example, in Australia, online shopping in the following categories recorded year-on-year increases in December 2020: food & liquor – 50% increase since December 2019; fashion – 37% increase since December 2019; home and garden products – 36% increase since December 2019; see Yolanda Redrup, 'AusPost Delivers as Online Shopping Hits New Heights', *Financial Review* (online, 11 January 2021) <<https://www.afr.com/companies/retail/auspost-delivers-as-online-shopping-hits-new-heights-20210110-p56syc>>. In Ireland, the Central Bank of Ireland recorded a 21% year-on-year increase in December 2020 in relation to online credit and debit card usage; see Central Bank of Ireland, 'Credit and Debit Card Statistics – December 2020' (Statistical Release, 29 January 2021) <<https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/credit-and-banking-statistics/credit-and-debit-card-statistics/credit-and-debit-card-statistics-december-2020.pdf?sfvrsn=5>>.

<sup>64</sup> Philippa Lally et al, 'How Habits are Formed: Modelling Habit Formation in the Real World' (2010) 40 *European Journal of Social Psychology* 998.

information can be easily correlated with other data sets (such as, for example, social media communications) to provide even more specific measures of public sentiment.<sup>65</sup>

The sweeping use of behaviour management in the form of lockdowns, restrictions on movement and mask-wearing imposed by governments may continue for longer than strictly necessary. If the population do not believe in the rationale of the behaviour management protocols, as seen in many parts of the world, a backlash can occur. Therefore, behaviour management needs to be done in an open and transparent way where the population understands and acknowledges its rationale.

### **3 Information Sharing**

Information and trusted data are the lifeblood of the digital economy. From advertising to public health to detection of criminal activities, the ability to access and use information is critical. As in war, in this crisis, accurate and factual information can mean life or death. Establishing a well-funded, national coordinating body – such as a Health Stability Board – as a crisis management tool could ensure timely information exchange – especially between the public and private sectors. Emergency government powers may be used to overcome data privacy and protection obstacles and intensify information exchange on health *and* financial / economic matters. Legal frameworks that mediate principles of data sharing and broader digital governance policies will be imperative within such an approach.

The wisdom of crowds is perhaps most apparent in the context of mass consumer behaviour. The purchasing behaviour of the consuming public provides real-time indications of trends and fashions and can readily highlight public consternation and full-blown panics. Using digital financing tools to aggregate purchase information (of medical supplies, for example, or toilet paper) can help identify emerging panics.

On a more immediate level, various online communities around the world have begun to organically co-ordinate and crowdsource information in order to help efficiently design, manufacture and distribute medical supplies where they are needed most.<sup>66</sup> These groups include engineers, chemists, logistics experts and many other professionals as discussions and ideas are moderated and filtered through various socially co-ordinated channels.

### **4 Collective Decision-Making**

Corporate decisions often depend on collective decision-making by boards and general meetings of shareholders. This could, among other things, relate to the disbursement of dividends, share buy-backs or recapitalization.<sup>67</sup> Keeping the economy afloat has

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<sup>65</sup> Dirk A Zetsche et al, 'From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance' (2018) 14(2) *New York University Journal of Law & Business* 393 ('From FinTech to TechFin').

<sup>66</sup> James Crowley, 'The Futuristic Solutions the Internet is Crowdsourcing to Cure Coronavirus', *Newsweek* (online, 18 March 2020) <<https://www.newsweek.com/crowdsourcing-solutions-coronavirus-covid-19-facebook-1493075>>.

<sup>67</sup> Dirk A Zetsche et al, 'The COVID-19-Crisis and Company Law - Towards Virtual Shareholder Meetings' (Working Paper, University of Luxembourg Faculty of Law, Economics & Finance WPS

required substitutes for in-person meetings. This is why many Parliaments around the globe have now provided for digital, instead of in-person, meetings in corporate governance rules. In particular, most advanced economies, by way of crisis legislation, have allowed for some type of remote voting and/or virtual shareholder meetings.<sup>68</sup>

## 5 *Tokenization*

Liquidity supply alone will not ensure demand in the real economy if choice of goods remains limited. Where choice of goods is limited, excess liquidity may translate into higher prices for the goods available. Where real goods are limited, digitally created financial goods (by way of token offerings) or new digital services (eg. entertainment and news) could partially consume the excess liquidity in an orderly manner,<sup>69</sup> but mis-selling and fraud may be more likely. Tokens, online banking and mobile money schemes could also be used to channel funds faster to consumers to provide financial support and to promote economic activity.

### IV **Human Impact: Digital Finance in Times of Disruption**

Digital finance can play an important role in addressing health and human impact in an existential sustainability crisis such as COVID-19. In addition, digital finance plays a central role in addressing the financial and economic impact and can provide important tools to support health and human impact strategies and policies.

#### A **Health Risk Management**

In particular, digital finance provides tools for monitoring potential epidemic outbreaks and provides mechanisms to direct the necessary financial resources to health care providers and others for them to discharge their functions.<sup>70</sup>

Telecoms and search data in particular can be valuable. Beyond this, the ability to deliver medical services and advice remotely ('telemedicine') requires reliable communications infrastructure (particularly internet and mobile but also fixed line) and electronic payment mechanisms.

And, of course, e-tokens can be used for disseminating scarce goods and services such as medicines and medical support to those with the greatest need.

From the standpoint of social distancing, e-commerce is vital. So far, this has been widely available in countries worst hit by this crisis (the developed ones). Even where

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2020-007, 15 June 2020)

<<https://ssrn.com/abstract=3576707>> or <<http://dx.doi.org/10.2139/ssrn.3576707>>.

<sup>68</sup> Ibid; Douglas K Chia, 'Key Takeaways and Best Practices from Virtual Shareholders Meetings in 2020', *Harvard Law School Forum on Corporate Governance* (Web Page, 2 July 2020) <<https://corpgov.law.harvard.edu/2020/07/02/key-takeaways-and-best-practices-from-virtual-shareholders-meetings-in-2020/>>.

<sup>69</sup> Lewis Cohen and Andreas Freund, *Blockchain in Public Goods Allocation: Unlocking Economic Value and Equitable Distribution through Token-Based Markets* (Consensus White Paper) <<https://cdn2.hubspot.net/hubfs/4795067/Consensus-Blockchain-in-Public-Good-Allocation-White-Paper-Master.pdf>>.

<sup>70</sup> Zetsche, Buckley and Arner (n 13).

e-commerce is present, it will be crucial to use technology for facilitating delivery over the last mile to avoid human contact between delivery service provider and recipient. Fintech allows all manner of sector specific innovations to flourish by providing the financial backbone to allow commercial use – and therefore growth and proliferation. The table below sets out examples of the range of initiatives where fintech is an underlying driver of disruption and innovation.

<b>Tools &amp; Examples</b>			
<i>Tools</i>	<i>Example</i>	<i>Relevance</i>	<i>Beneficiary</i>
<b>E-Commerce</b>	Amazon Prime	Provide logistic delivery network for deployment of material	Public / SME
<b>HealthTech</b>	Babylon	Tele-medicine in order to evaluate individual situation	Public / Hospitals
<b>EdTech</b>	Edx	SME digitization to access FinTech services in order to process online payments on these platforms	SME
<b>Alternative Data</b>	Klarna	Re-evaluate credit scoring methods with dynamic sources	Public / SME
<b>Gig Economy</b>	Deliveroo	Leverage on mobile workforce to reach isolated people	Public
<b>WealthTech</b>	Trezeo	Smoothen irregular income with investment product	Public
<b>Mobile Phones</b>	DemystData	Mapping of individual movement to estimate cluster spread	Public / Hospitals
<b>ISP</b>	RTR (AT)	Adjust bandwidth-cap to maintain service connectivity	Gov / SME

During the crisis, governments have looked increasingly to digital identity for a dynamic understanding of the financial and personal health of individuals. In particular, as individuals recover health-wise, it becomes increasingly important to redirect our focus back to the economic crisis. We also need to consider alternative technological approaches for monitoring. For instance, all people who have developed immunity could be assigned a personalized token with key health and qualification data that comes with a greater degree of personal freedom.<sup>71</sup> Depending on priorities and need,

<sup>71</sup> Paul Mozur, Raymond Zhong and Aaron Krolik, ‘In Coronavirus Fight, China Gives Citizens a Color Code, with Red Flags’, *The New York Times* (online, 1 March 2020) <<https://www.nytimes.com/2020/03/01/business/china-coronavirus-surveillance.html>>; Heather Murphy, ‘14 Days with a Quarantine Tracker Wristband: Does it Even Work?’, *The New York Times* (online, 8 April 2020) <<https://www.nytimes.com/2020/04/08/world/asia/hong-kong-coronavirus-quarantine-wristband.html>>.

token holders may even be enabled or required to assist elderly and persons at risk and/or perform crucial economic and production functions. Through the token, the respective priorities could be adjusted short term, taking into account the region, qualifications and social commitments of token holders.

## B Insurance

The availability of insurance (medical, travel, pet etc) via online platforms has grown in recent years.<sup>72</sup> As COVID-19 has spread, the demand for insurance has also increased. Notably, however, the declaration of COVID-19 as a pandemic rendered many existing travel insurance policies ineffectual and left many others in grey areas in relation to claims.<sup>73</sup> In the US, one of the most contentious areas to emerge due to the pandemic involves business interruption insurance<sup>74</sup> and it is expected ever more such disputes will continue to arise in the wake of the economic fallout and ongoing lockdown policies.

In order to alleviate distress and simplify the resolution of insurance-related financial disputes, online dispute resolution services, such as the private UK service ‘Resolver’,<sup>75</sup> may have a vital role in the recovery process (particularly in light of the likely ongoing social distancing guidelines).

Attaining insurance through digital platforms has never been easier. The responsiveness of InsurTech platforms to the epidemic has been most visible in China especially with WeSure (the insurance arm of Chinese tech giant Tencent). WeSure has rapidly launched a suite of insurance products<sup>76</sup> aimed at protecting potential COVID-19 victims (covering a wide scope of potential policyholders from medical personnel to SMEs). Xiang Hu Bao, a Chinese mutual aid platform (backed by Ant Financial) has piloted the use of blockchain data verification to fast-track payments to virus victims and avoid face-to-face transactions.<sup>77</sup>

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<sup>72</sup> Sabine Gebert-Persson et al, ‘Online Insurance Claims: When More than Trust Matters’ (2019) 37(2) *International Journal of Bank Marketing* 579, 580.

<sup>73</sup> Anna Tims, ‘Coronavirus: Travel Insurance Policies Not Paying Out in a Crisis’ *The Guardian* (online, 31 March 2020) <<https://www.theguardian.com/money/2020/mar/31/coronavirus-travel-insurance-policies-not-paying-out-in-a-crisis>>; Pat McGrath, ‘TAL Drops Plans for Coronavirus Exclusion Clause on Life Insurance’ *ABC News* (online, 8 April 2020) <<https://www.abc.net.au/news/2020-04-08/tal-backflips-coronavirus-exclusion-clauses-for-life-insurance/12130484>>.

<sup>74</sup> Rachel E Keen and Jonathan Reid Reich, ‘COVID-19 Shutdowns, Related Litigation Put Pressure on Business Interruption Insurers’ (2020) 10(37) *The National Law Review* <<https://www.natlawreview.com/article/covid-19-shutdowns-related-litigation-put-pressure-business-interruption-insurers>>.

<sup>75</sup> Detailed information on services ‘Resolver’ offers is available at: ‘Insurance Complaints’, *Resolver* (Web Page, 2020) <<https://www.resolver.co.uk/complaints/insurance-complaints>>.

<sup>76</sup> ‘WeSure Launches Novel Coronavirus Pneumonia Insurance Covering 15 Million People against Outbreak of Covid-19’, *PRNewswire* (online, 15 February 2020) <<https://www.finanzen.ch/nachrichten/aktien/wesure-launches-novel-coronavirus-pneumonia-insurance-covering-15-million-people-against-outbreak-of-covid-19-1028907657>>.

<sup>77</sup> Georgina Lee, ‘Insurance Service Providers Rely on Blockchain to Fast Track Claims Payout amid Coronavirus Outbreak’, *South China Morning Post* (online, 9 February 2020) <<https://www.scmp.com/business/companies/article/3049479/insurance-service-providers-rely-blockchain-fast-track-claims>>.

WeSure has even launched a free insurance policy,<sup>78</sup> open to all Chinese citizens up to 65 years of age, as part of its corporate social responsibility obligations to further support the Chinese people and the fight against the virus. Beyond being a shrewd financial move, this has clearly communicated the message that ‘you are safe in our eco-system’ – blurring the lines between the real and virtual worlds in a way sure to favour BigTech organizations.

### C Electronic and Contactless Payments

Beyond the need to avoid face-to-face transactions and payments as a result of the crisis, the norms of social interaction are shifting due to concerns over the spread of the virus. People across the world have been instructed to minimize physical contact in the course of their everyday lives. Digital wallets supporting contactless payment and other forms of contactless transacting are proving to be faster and more convenient than traditional cash or card transactions, as well as more hygienic.<sup>79</sup> The decades-old trend towards a cashless society now has an even more compelling driver. This is a field ripe for further, and ongoing, behavioural change.

### D Crowdfunding

Crowdfunding initiatives (and their supporting platforms)<sup>80</sup> are emerging as vital decentralized lifelines<sup>81</sup> in times when the capabilities of centralized governmental control are being severely tested. Members of the public who might otherwise feel powerless in the face of the virus, have committed millions of dollars to COVID-19-related crowdfunded causes – these include everything from a high profile crowd funding campaign launched by football superstar Zlatan Ibrahimović,<sup>82</sup> to less high-profile causes regarding people facing economic hardship due to virus-related job loss.

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<sup>78</sup> Charlie Wood, ‘Free Coronavirus Cover Offered by Insurtech WeSure’, *Reinsurance News* (online, 17 February 2020) <https://www.reinsurancene.ws/free-coronavirus-cover-offered-by-insurtech-wesure/>; ‘Tencent WeSure CEO Alan Lau: COVID-19 Spurs Insurance Demand in China’, *PR Newswire* (online, 5 June 2020) <<https://www.prnewswire.com/news-releases/tencent-wesure-ceo-alan-lau-covid-19-spurs-insurance-demand-in-china-301071273.html>>.

<sup>79</sup> Although the risks of viral transmission by the handling of cash have at times been overstated: Raphael Auer, Giulio Cornelli and Jon Frost, ‘Covid-19, Cash and the Future of Payments’ (3 April 2020) 3 *BIS Bulletin* <<https://www.bis.org/publ/bisbull03.htm>>; see also Serhan Cevik, ‘Dirty Money: Does the Risk of Infectious Disease Lower Demand for Cash?’ (Working Paper No 2020/255, International Monetary Fund, 20 November 2020) 11 <<https://www.imf.org/en/Publications/WP/Issues/2020/11/20/Dirty-Money-Does-the-Risk-of-Infectious-Disease-Lower-Demand-for-Cash-49877>>.

<sup>80</sup> John Armour and Luca Enriques, ‘The Promise and Perils of Crowdfunding: Between Corporate Finance and Consumer Contracts’ (2018) 81(1) *Modern Law Review* 51; Dirk Zetzsche and Christina Preiner, ‘Cross-border Crowdfunding: Towards a Single Crowdlending and Crowdinvesting Market for Europe’ (2018) 19(2) *European Business Organization Law Review* 217.

<sup>81</sup> Nicholas Kulish, “‘People Need Immediate Relief,’ and Online Donors Make it Happen”, *The New York Times* (online, 16 March 2020) <<https://www.nytimes.com/2020/03/16/business/coronavirus-bills-charity.html>>.

<sup>82</sup> ‘Kick the Virus away!’, *GoFundMe* (Web Page, 18 March 2020) <<https://www.gofundme.com/f/kick-the-virus-away>>.

Even the Centre for Disease Control (CDC) turned to crowdfunding,<sup>83</sup> whilst a GoFundMe page for the San Raffaele hospital in Milan raised almost 4.5 million Euros before the organiser stopped seeking new donations.<sup>84</sup> Leading Ethereum crowdfunding platform Gitcoin also held a public health focused funding round.<sup>85</sup>

Although start-up funding via crowdfunding platforms will diminish due to the virus,<sup>86</sup> the platforms themselves are proving useful and versatile. The case can even be made that crowdfunding is in fact helping the fight against COVID-19 through its ability to financially support, for example, frontline medical staff who have contracted the virus and been forced into self-isolation without pay.<sup>87</sup>

In this global crisis in a globalized world, crowdfunding is connecting urban populations to their local businesses, parks,<sup>88</sup> entertainment venues, and sports clubs -- strengthening community bonds that in recent decades may have frayed. Major tech players are using their platforms to support this organic outpouring of community support underscoring an important dimension to digital finance.<sup>89</sup>

Ironically, digital financial platforms, so synonymous with global capital and transnational finance, are in some ways having grassroots impact and rebuilding social community bonds in a context where faith in globalization is being tested. Digital token offerings are playing into this broader trend, as individuals are able to use such technologies to invest in crowdfunding initiatives within their local or regional communities and economies demonstrating much needed solidarity.

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<sup>83</sup> 'CDC Foundation Launches Crowdfunding Campaign to Extend and Accelerate Public Health Coronavirus Response', *CDC Foundation* (Web Page, 12 March 2020) <<https://www.cdcfoundation.org/pr/2020/cdc-foundation-launches-coronavirus-covid19-crowdfunding-campaign-charidy>>.

<sup>84</sup> 'Coronavirus, Rafforziamo la Terapia Intensiva', *GoFundMe* (Web Page) <<https://www.gofundme.com/f/coronavirus-terapia-intensiva>> last visited 8 February 2021.

<sup>85</sup> Mike Dalton, 'Ethereum's Largest Crowdfunding Platform to Combat Coronavirus with Grants', *CryptoBriefing* (online, 14 March 2020) <<https://cryptobriefing.com/ethereums-biggest-crowdfunding-platform-combat-coronavirus-grants/>>.

<sup>86</sup> JD Alois, 'Startup Funding Predicted to Take Coronavirus Induced Hit in Q1', *Crowdfund Insider* (online, 17 March 2020) <<https://www.crowdfundinsider.com/2020/03/158929-startup-funding-predicted-to-take-coronavirus-induced-hit-in-q1/>>.

<sup>87</sup> Sally Murrer, 'Milton Keynes Hospital Staff Forced to Self-Isolate due to Coronavirus Get Crowdfunding Help', *MkCitizen* (online, 16 March 2020) <<https://www.miltonkeynes.co.uk/health/coronavirus/milton-keynes-hospital-staff-forced-self-isolate-due-coronavirus-get-crowdfunding-help-2451923>>.

<sup>88</sup> Mark Taylor, 'Crowdfunding Effort to Support Milton Country Park', *Cambridge Independent* (online, 14 April 2020) <<https://www.cambridgeindependent.co.uk/news/crowdfunding-effort-to-support-milton-country-park-9106269/>>.

<sup>89</sup> Cromwell Schubarth, 'Yelp, Intuit Pitch in with GoFundMe to Help Small Businesses Hurt by COVID-19', *Silicon Valley Business Journal* (online, 24 March 2020) <<https://www.bizjournals.com/sanjose/news/2020/03/24/yelp-pitches-in-to-help-on-small-businesses-hurt.html>>.

The flood of activity in the crowdfunding space has also highlighted the vulnerabilities of such platforms and the cybercrime risks in the form of unscrupulous operators and scams.<sup>90</sup>

## E Digital Currencies: Private and Sovereign

The decentralized nature of many cryptocurrencies has the potential to mitigate the danger of operational disruption due to a severe outbreak in a particular area. The advantages of a decentralized operational structure could come very much to the fore in this context.<sup>91</sup> However, this has not stopped the price of Bitcoin, the most well-known cryptocurrency, from being highly volatile, belying its digital ‘safe haven’ reputation.<sup>92</sup>

Certainly, one of the more controversial innovations where digital finance and the COVID-19 crisis overlap was the development of the ‘CoronaCoin’<sup>93</sup> crypto-currency announced in early February 2020. The idea behind the token was that the supply of the coin would diminish every 2 days at a rate connected with the fatalities caused by the virus. This would push up the price of the coin, rewarding investors with a return. The total supply of tokens was based on the global population and 20% of proceeds were to go to the Red Cross. What utility the coin provides, or where it could be used remained unclear; and many (including Forbes magazine) labelled the cryptocurrency a macabre gimmick.<sup>94</sup> The coin has now lost all its value and had no noticeable impact.<sup>95</sup>

As noted by the developers of CoronaCoin, however, the idea of a cryptocurrency with a virus or disease as an underlying asset-condition, is not dissimilar to the World Bank’s 2017 ‘Pandemic Bonds’<sup>96</sup> which were designed to help developing nations facing infectious disease outbreaks (but which are currently being offloaded by investors<sup>97</sup> and

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<sup>90</sup> ‘FBI Warns of Potential Charity Fraud Associated with the COVID-19 Pandemic’, *Federal Bureau of Investigation* (Web Page, 14 October 2020) <<https://www.fbi.gov/news/pressrel/press-releases/fbi-warns-of-potential-charity-fraud-associated-with-the-covid-19-pandemic>>.

<sup>91</sup> Hossein Nabilou, ‘Bitcoin Governance as Decentralised Financial Market Infrastructure’ (16 March 2020) *SSRN* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3555042](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555042)>.

<sup>92</sup> ‘Bitcoin’s Coronavirus Crash; Blockchain in a Pandemic’, *Forbes* (online, 15 March 2020) <<https://www.forbes.com/sites/cryptoconfidential/2020/03/15/bitcoins-coronavirus-crash-blockchain-in-a-pandemic/#5862f9bf2a5b>>. But see also, Billy Bambrough, ‘Bitcoin’s Next Boom Has Already Begun’, *Forbes* (online, 10 April 2020) <<https://www.forbes.com/sites/billybambrough/2020/04/10/bitcoins-next-boom-has-already-begun/#1ddee1105c64>>.

<sup>93</sup> Anna Irrera, ‘CoronaCoin: Crypto Developers Seize on Coronavirus for New, Morbid Token’, *Reuters* (online, 28 February 2020) <<https://www.reuters.com/article/us-china-health-crypto-currency/coronacoin-crypto-developers-seize-on-coronavirus-for-new-morbid-token-idUSKCN20M32A>>.

<sup>94</sup> Billy Bambrough, ‘Bitcoin and Crypto Investors: Avoid this New Cryptocurrency Like the Plague’, *Forbes* (online at 10 March 2020) <<https://www.forbes.com/sites/billybambrough/2020/03/10/bitcoin-and-crypto-investors-avoid-this-new-cryptocurrency-like-the-plague/#68a360886cdb>>.

<sup>95</sup> ‘Token: CoronaCoin’, *Etherscan* (Web Page, November 2020) <<https://etherscan.io/token/0xb80112E516DAbcaC6Ab4665f1BD650996403156C>>.

<sup>96</sup> ‘Fighting Decease with Finance: Pandemic Bonds, a New Idea’, *The Economist* (online, 27 July 2017) <<https://www.economist.com/finance-and-economics/2017/07/27/pandemic-bonds-a-new-idea>>.

<sup>97</sup> Anna Gross, ‘World Bank’s Pandemic Bonds Sink as Coronavirus Spreads’, *Financial Times* (online, 24 February 2020) <<https://www.ft.com/content/70dd05ac-54d8-11ea-8841-482eed0038b1>>.



have never, even now, paid out).<sup>98</sup> A second round of offerings of the pandemic bonds instrument has now been abandoned by the World Bank in what is seen as a complete failure of the project to produce the material benefits expected.<sup>99</sup>

The most significant impact of COVID-19 on digital currencies is likely to be on sovereign digital currencies, in particular central bank digital currencies.<sup>100</sup> CBDCs and other forms of sovereign digital currency and electronic payment infrastructure are being developed very rapidly to provide foundational tools in connecting financial resources to individuals, businesses, NGOs and government.<sup>101</sup> Looking back, this may well be one of the central developments to emerge from the crisis. Looking forward, CBDCs – along with sovereign digital identity systems, interoperable electronic payments, and universal communications and financial account access – may well be some of the major outgrowths of the pandemic and may prove to underpin financial systems able to support financial stability and underpin economies and societies in future existential sustainability crises of the sort we are unfortunately likely to see more of in coming years and decades.

## F Cross-border Payments and Remittance Services

Remittances serve as an important lifeline for many economies around the world (eg. Philippines, Bangladesh,<sup>102</sup> Nepal). Despite some governments in remittance dependent economies initially denying the impact of COVID-19 on inward remittances,<sup>103</sup> the figures are now clear and show a 7% decrease in global inward remittances by October 2020.<sup>104</sup> The World Bank predicts remittances to fall by about another 14% in 2021.<sup>105</sup> The effects of a global economic slowdown and widespread job losses has impacted

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<sup>98</sup> Hanna Ziadi, 'These Bonds Were Supposed to Help Fight Deceases Like Coronavirus. They've Never Paid Out', *CNN Business* (online at 15 February 2020) <<https://edition.cnn.com/2020/02/15/business/pandemic-bonds-coronavirus/index.html>>.

<sup>99</sup> 'World Bank Abandons Pandemic Bond Instrument After Disastrous Covid-19 Response', *Bretton Woods Project* (Web Page, 6 October 2020) <<https://www.brettonwoodsproject.org/2020/10/world-bank-abandons-pandemic-bond-instrument-after-disastrous-covid-19-response/>>.

<sup>100</sup> However, central bank digital currencies have already received increasingly positive attention from central banks and policymakers since late-2019 - see Bank For International Settlements, *Annual Economic Report* (Report, 30 June 2020) 87-9 <<https://www.bis.org/publ/arpdf/ar2020e.htm>>.

<sup>101</sup> Douglas Arner, Raphael Auer and Jon Frost, 'Stablecoins: Risks, Potential and Regulation' (BIS Working Papers No 905, 24 November 2020) <<https://www.bis.org/publ/work905.htm>>.

<sup>102</sup> AKM Zamir Uddin, 'Remittance Was Cruising; COVID-19 Popped-up and Made it Swerve', *The Daily Star* (online, 15 March 2020) <<https://www.thedailystar.net/business/news/remittance-was-cruising-then-covid-19-popped-and-made-it-swerve-1880968>>.

<sup>103</sup> Virgil Lopez, 'Gov't Sees Minimal Impact of COVID-19 on Remittances', *GMA News* (online, 24 February 2020) <<https://www.msn.com/en-ph/money/topstories/govt-sees-minimal-impact-of-covid-19-on-remittances/ar-BB10jc1s>>.

<sup>104</sup> The percentage has been rounded to 0 decimal places and was calculated based on data compiled by the World Bank showing that by October 2020, global inward remittance flows had decreased from US\$ 716,674 million in 2019 to US \$666,223 million. See The World Bank, 'Annual Remittances Data (updated as of Oct. 2020): Inflows' (Spreadsheet, October 2020) <<https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>>.

<sup>105</sup> 'COVID-19: Remittance Flows to Shrink 14% by 2021', *World Bank* (Web Page, 29 October 2020) <<https://www.worldbank.org/en/news/press-release/2020/10/29/covid-19-remittance-flows-to-shrink-14-by-2021>>. See also 'Pandemic Hits Global Poor: World Bank Projects Drop in Remittances', *NPR* (Interview, 6 February 2021) <<https://www.npr.org/transcripts/964893542>>.

low-skilled migrant workers in construction and hospitality industries in many regions where there has been a contraction in those sectors.

Remittances to Africa declined by 9% in 2020.<sup>106</sup> This is a massive hit given that inward remittances to Africa are equivalent to 3% of the continent's GDP.<sup>107</sup>

With many sectors scaling back or ceasing their activities due to government-imposed lockdown policies and in line with social distancing mandates, services are frequently limited to those designated as 'essential'. In most jurisdictions, that includes banks.<sup>108</sup> Non-bank exchange houses and remittance providers are not often in such a clear category. The role of online remittances and the use of mobile money, digital wallets and other non-physical remittance digital infrastructure platforms has been crucial. Digital platforms, digital cash and digital wallets have emerged as key tools and mechanisms to ensuring that the financial symptoms of the pandemic are not harsher than they need to be for remittance-dependent countries, in addition to pretty much everyone else around the world, where there has been a clear trend away from use of cash and towards digital transfers, payments and remittances, both public and private.

Importantly digital finance offers the potential to underpin cheaper, more efficient and safer cross-border payment systems, with related initiatives emanating from Facebook with its proposed global stablecoin Libra / Diem and a related and important initiative from the Group of 20 to enhance cross-border payments.<sup>109</sup>

## G Pensions and Retirement Funding

The initial impact of the virus on share markets around the world exposed many retirees and near-retirees to massive losses followed by massive gains and now the potential risks of asset price bubbles particularly in tech-related stocks around the world. This has been exacerbated in most places by cuts in interest rates to stimulate the economy but which also often reduces fixed income flows to dependent populations. In jurisdictions where there are compulsory retirement savings obligations (401K in the US and the Superannuation system in Australia, for example), of all financial impacts,

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<sup>106</sup> Teresa Welsh, 'Anticipated Remittance Dive Bucked by Latin America and the Caribbean', *Devex* (Web Page, 11 January 2021) <<https://www.devex.com/news/anticipated-remittance-dive-bucked-by-latin-america-and-the-caribbean-98880>>.

<sup>107</sup> Wafa Aidi, Razaq Fatai, and Stephen Karingi, 'COVID-19 and Migrant Remittances: Supporting This Essential Lifeline Under Threat', *Brookings* (Web Page, 26 October 2020) <<https://www.brookings.edu/blog/africa-in-focus/2020/10/26/covid-19-and-migrant-remittances-supporting-this-essential-lifeline-under-threat/>>.

<sup>108</sup> For example, Australia: Ben Doherty, "Non-essential" Services: What do Australia's Latest Coronavirus Restrictions Mean?', *The Guardian* (online, 22 March 2020) <<https://www.theguardian.com/world/2020/mar/22/non-essential-travel-what-do-australias-latest-coronavirus-restrictions-mean>>; New Zealand: Jason Walls, 'Covid-19 Coronavirus Lockdown: What Is an "Essential" Service that Can Stay Open?', *New Zealand Herald* (online, 24 March 2020) <[https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12319181](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12319181)>. Compared with Germany and Italy: Hans Seidenstuecker and Sinead Cruise, 'Some European Banks Shut Branches to Limit Coronavirus Spread', *Reuters* (online, 17 March 2020) <<https://www.reuters.com/article/us-health-coronavirus-germany-banks/some-european-banks-shut-branches-to-limit-coronavirus-spread-idUSKBN2132QX>>; and Hong Kong: 'Some Bank Branches Temporarily out of Service', *Hong Kong Monetary Authority* (Press Release, 31 January 2020) <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/01/20200131-3/>>.

<sup>109</sup> 'The Use of Supervisory and Regulatory Technology' (n 36).

share market fluctuations caused the big biggest immediate losses to individuals<sup>110</sup> although in most cases those losses have now been recovered. In the US, lawmakers have attempted to address 401K related issues through Section 2202 of the CARES Act, which creates favourable tax treatment arrangements for types of asset distributions for those directly affected by the virus.<sup>111</sup>

Long considered the least innovative and disrupted part of the financial sector,<sup>112</sup> the retirement planning or ‘WealthTech’ sector has been now forced into greater digitization by the pandemic. COVID-19 has pushed many into early retirement and a rethinking of their life goals (and even life-expectations). This has encouraged greater digitization to meet the growing demand for wealth planning and financial advice.<sup>113</sup>

Although most participants in these schemes are oblivious to what is happening to their savings, even if they wanted to actively participate in where or how their retirement nest eggs are invested, it would be far from straight forward. With managed funds, the best one could hope for would be a spectrum of investment options ranging from ‘cash’ (less risky) to ‘high return’ (riskier) investment configurations. The extent to which technology can assist individuals to manage their retirement savings is greater with self-managed funds. The ability to execute changes in investment options rapidly can be greatly enhanced through digital technology (including distributed ledger technology). At present, the lag between change requests and execution (up to several days) is too slow to respond to the pace of economic changes and government announcements taking place. Some investors in this space are therefore moving towards the ‘robo-advising’ option in an effort to leverage technology to wrest back greater personal control of their assets.<sup>114</sup> Robo-advisory services offer the potential to both reduce costs through automation and scale while providing better quality services to many who

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<sup>110</sup> Suzanne McGee, ‘Don’t Panic over your 401(k)! It’s Time to Emotionally Distance from the Markets’, *The Guardian* (online, 23 March 2020) <<https://www.theguardian.com/money/2020/mar/23/what-to-do-as-the-markets-plunge-amid-coronavirus-establish-emotional-distance>>; Madeleine Morris, ‘What Coronavirus Has Done to Your Super – And Why You Shouldn’t Panic’, *ABC News* (online, 19 March 2020) <<https://www.abc.net.au/news/2020-03-19/coronavirus-covid-19-what-has-it-done-to-superannuation-shares/12069628>>.

<sup>111</sup> ‘Coronavirus-related Relief for Retirement Plans and IRAs Questions and Answers’, *Internal Revenue Service* (Web Page, 19 September 2020) <<https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers>>.

<sup>112</sup> But see on digitalisation through the development of digital finance platforms Dirk Zetzsche, B. Birdthistle, D. Arner & R. Buckley, ‘Digital Finance Platforms – Toward a New Regulatory Paradigm’ (2020) 23(1) *University of Pennsylvania Journal of Business Law* 11-70 (2020).

<sup>113</sup> Samuel Steinberger, ‘Coronavirus Fears Accelerate WealthTech Innovation’, *Wealth Management* (Web Page, 6 August 2020) <<https://www.wealthmanagement.com/technology/coronavirus-fears-accelerate-wealthtech-innovation>>; Antonina Olecka, ‘How is COVID-19 Impacting Global WealthTech? Perspective from the Swiss FinTech Ecosystem’, *Swiss Finance + Technology Association* (Web Page, 12 May 2020) <<https://swissfinte.ch/covid-19-impacting-global-wealthtech-perspective-swiss-fintech-ecosystem/>>.

<sup>114</sup> Ross Snel, ‘Robo-advisor Account Sign-ups Surge Amid Pandemic’, *Barron’s* (online, 1 April 2020) <<https://www.barrons.com/articles/robo-advisor-account-sign-ups-surge-amid-pandemic-51585757592>>. The price volatility and rapid changes in circumstances arising from the pandemic have created clear arbitrage opportunities that high frequency trading platforms have been able to exploit. John Detrixhe, ‘High-Frequency Traders are Winning Big Thanks to Coronavirus Disruption’ *Quartz* (online, 5 April 2020) <<https://qz.com/1832540/high-frequency-traders-winning-big-amid-coronavirus-disruption/>>.

could not justify the costs of high quality human advice. Going forward, WealthTech offers important savings, investment and pension opportunities to a much wider spectrum of the population than had previously been commercially viable – the true potential of digital finance to serve the ‘Next Billion’.

Ironically, the newest technologies in financial management may benefit the oldest members of our community the most.

## **V Risks and Challenges of Digitization of Finance: TechRisk**

Digital finance brings both valuable and important tools and also significant new forms of risk.<sup>115</sup> COVID-19 has dramatically driven forward electronic payments and digital finance and digitization and digital activities more generally. This pervasive digitization provides many benefits but at the same time brings with it new dependency risks and potential for abuse. These opportunities and challenges are emerging as major policy questions that will require appropriate legal and regulatory responses from countries around the world.

### **A. Digital Financial Infrastructure: Cybersecurity Risks**

In particular, there are increasing concerns about the robustness of fundamental digital infrastructure – the internet and communications systems – in addition to concerns about the digital financial infrastructure. The more people work remotely, the greater the stress on these systems, in particular on the internet generally and the security of VPN and other systems. Besides the obvious – insufficient bandwidth and reliability of server backbones – stresses can arise from issues such as shortages of spare parts for networks due to delays on shipping and border controls, and systems engineers being less available to install them due to illness or increased demand for their services. Further, increasing use of the internet could shift energy demand from industrial users to services and consumers – with a potentially detrimental effect on energy supply and infrastructure tailored for different user groups. The increasing ubiquity of digital finance also raises cyber risks in addition to digital infrastructure risks, whether of payments, securities, cloud or the internet.<sup>116</sup> Malicious actors have been quick to take advantage of the situation and governments have had to promptly distribute advice to citizens to make them aware of this growing threat.<sup>117</sup> Moreover, digital proliferation brings increasing risks of crime, with the most rapidly growing area of crime being digital crime.<sup>118</sup>

Thus, cybersecurity and related legal and regulatory responses have emerged as a key challenge and area of focus in the years ahead: how to balance our the benefits and risks of our increasing digital dependency.

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<sup>115</sup> Buckley et al (n 30).

<sup>116</sup> Ibid 1.

<sup>117</sup> ‘Past Updates on COVID-19 Local Situation’, *Ministry of Health Singapore* (Web Page, 15 April 2020) < <https://www.moh.gov.sg/covid-19/past-updates>>.

<sup>118</sup> Arner, Barberis and Buckley, ‘Evolution of FinTech’ (n 24) 1292.

## B. Concentration Risks

In addition to these, digitization driven by COVID-19 has dramatically increased the role and significance of cloud, data and communications systems, infrastructure and firms. These industries are characterized by network effects and economies of scope and scale, which lead towards concentration or ‘winner-takes-all’ outcomes which were already evident prior to 2020. The dramatic increase in digitization during 2020 however has accelerated this process. It is now leading to a reaction – a necessary reaction – from governments around the world and particularly in major economies including the US, EU, China and India that are focusing on the role of these firms and the risks of dominance vis-à-vis their advantages in terms of efficiency and in many cases safety.

As a result, in addition to cybersecurity, the role of data and data concentrations have emerged as key policy issues and major legal and regulatory challenges going forward. These will be among the biggest questions for societies around the world over the coming decade.

## C. Data Risks

Finally, a major policy consideration will be how technologies (such as digital identification and tracking) can be misused by the governments and state actors in addition to private companies. In addition to control over the movement of people, we have good reason to fear interference with free speech and the right to express opinions – all in the name of health. Apparently justified by medical needs, we already see early examples where executive emergency powers are abused – we expect this trend to continue the longer the crisis continues and to the extent that the crisis erodes the stability of a country’s institutions.<sup>119</sup> There is growing evidence and concern of surveillance involving technologies that most were being used before the crisis with significant criticism.<sup>120</sup> The crisis, however, can be used to show how this technology is useful to help ‘save lives’, and justify its deployment and retention or expansion well after this crisis is over.

In addition to cybersecurity and concentration risks, data use – both by the public and private sector – is emerging as a major area of policy attention, with likely very different legal and regulatory approaches emerging across major economies.

These are all forms of TechRisk and have been dramatically accelerated by COVID-19 digitization and in particular digitization of financial, economic and social activity. Each of these areas is rapidly emerging as major policy, legal and regulatory issues for countries across the world. Over the next decade, we expect these issues will be among the most important regarding digital finance as it is used to build better digital financial infrastructure to address future existential sustainability crises and to support wider sustainable development.

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<sup>119</sup> Ramya Vijaya et al, ‘Coronavirus Versus Democracy: 5 Countries Where Emergency Powers Risk Abuse’, *The Conversation* (online, 7 April 2020) <<https://theconversation.com/coronavirus-versus-democracy-5-countries-where-emergency-powers-risk-abuse-135278>>.

<sup>120</sup> Zak Doffman, ‘Why We Should Fear China’s Emerging High-Tech Surveillance State’, *Forbes* (online, 28 October 2018) <<https://www.forbes.com/sites/zakdoffman/2018/10/28/why-we-should-fear-chinas-emerging-high-tech-surveillance-state/#7a64a0184c36>>.

## VI Conclusion

The middle of a major crisis is not the time to try to implement entirely new digital and technological solutions. It is the time to use the digital infrastructure already in place to far greater, and potentially new, effects, and the best way to do this may well be for governments to continue working with the financial sector and fintech experts to explore what can be done in each country and across borders. Mobile money and other payment infrastructures are key to directing targeted payments to the people and small businesses most in need. These digital payment infrastructures offer speed and traceability. Trust and certainty need to be preserved and enhanced. Rapid support payments going to those most in need, work best to achieve both ends.

Importantly, largely as a result of post-2008 regulatory reforms combined with the technological transformation of finance over the past decade, digital financial infrastructure around the world has proven robust in the context of the incredible strains placed upon it by the COVID-19 pandemic. This outcome is significant and should not be undervalued. It highlights the value of regulations geared to achieving financial stability, and more generally, the critical role of digital finance within that mandate. Digital finance has also played and is continuing to play an important role in supporting health and economic responses to this existential sustainability crisis. Nonetheless, the combination of central bank liquidity and digital finance is resulting in new volatility and possible asset price bubbles, which in turn bring new financial stability risks.<sup>121</sup>

As quarantines and lockdowns have now become commonplace in most countries, billions of people around the world are being, or have been, restricted from leaving their homes. This is changing people's habits. This change can be measured by looking at the significant spike in e-commerce activity,<sup>122</sup> home entertainment use adoption<sup>123</sup> (ie. streaming services) and home delivery services.<sup>124</sup> Digital financial services and payment platforms are a key component of the online commercial sphere people have been forced to use.

The response to COVID-19 is essentially a large-scale social experiment. The shock is priming people's behaviour towards more online and digital options. Once the crisis resolves, it is very likely that the habits, cost savings and convenience factors revealed to large swathes of consumers through this crisis will result in permanent behavioural changes.

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<sup>121</sup> See Financial Stability Board, *COVID-19 Pandemic: Financial Stability Implications and Policy Measures Taken* (Report to the G20, 15 April 2020) 1 <<https://www.fsb.org/2020/04/covid-19-pandemic-financial-stability-implications-and-policy-measures-taken/>>.

<sup>122</sup> Seb Joseph, 'As Coronavirus Outbreak Grinds on, E-commerce Operations Buckle under Increased Pressure', *Digiday* (online, 24 February 2020) <<https://digiday.com/marketing/coronavirus-outbreak-grinds-e-commerce-operations-buckle-increased-pressure/>>.

<sup>123</sup> Todd Spangler, 'Coronavirus Spread Benefits Netflix, Other 'Stay-at-Home' Companies, Analysts Say', *Variety* (online, 28 February 2020) <<https://variety.com/2020/digital/news/netflix-coronavirus-benefit-stay-at-home-stocks-1203518686/>>.

<sup>124</sup> Andrew Keshner, 'If the Coronavirus Spreads in America, Food Delivery Companies Could See a Surge in Demand – Are They Ready?', *MarketWatch* (online, 2 March 2020) <<https://www.marketwatch.com/story/if-the-coronavirus-spreads-in-america-food-delivery-companies-could-see-a-surge-in-demand-are-they-ready-2020-02-28>>.

There is a precedent. Following the 2008 crisis, financial institutions began to favour video-conference meetings over cross-border travel as part of cost cutting measures. Banks invested in the necessary hardware and people were incentivized to use these (at the time – new) tools. Ten years later, videoconferencing is the norm for many meetings around the world and is sustaining many sectors (such as education and shareholder meetings) in these unprecedented times.

Given that the digital infrastructure already exists, the COVID-19 outbreak will likely be the catalyst propelling an even faster adoption of activities relying on digital financial services. In the meantime, the intelligent, creative use of digital means offers much in the battle to alleviate the social, economic, and some health consequences of the crisis.

This digitization however is proving a potential two-edged sword: digitization of finance and everything else brings new opportunities for financial, economic and social interactions and business, with great potential to support not only financial stability but also wider sustainable development. At the same time, digitization brings tremendous new risks and challenges – TechRisks – in particular relating to cybersecurity, data-concentration, and privacy. These risks are the subject of major policy debates around the world and present significant legal and regulatory challenges. What role will data and technology play in our financial systems, economies and societies? In addition, how can governments, through law and regulation, balance the tremendous positive potential with the associated and emerging risks? These are the key policy fault lines emerging from COVID-19 digitization we argue will characterize the challenges for societies globally during the 2020s.

Looking forward, it is clear that COVID-19 will not be the last pandemic or the last existential sustainability crisis. If anything, it is likely that the world will face an increasing range of existential sustainability crises going forward, not only from pandemics but in particular from climate change and geopolitics. The 2008 global financial crisis offered an opportunity to build a more stable and resilient financial system. The experiences of 2020 and COVID-19 suggest that these efforts were broadly successful. Similarly, the COVID-19 crisis offers an opportunity to focus on building more resilient and effective digital financial infrastructure that will not only prove robust in future existential sustainability crises but also provide key tools and systems to respond to such crises when they occur. At the same time, this digitization brings with it important and fundamental questions for societies in terms of legal and regulatory approaches to digital finance in order to balance the positive with the potential for tremendous risk.