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BIGGER PICTURE



1. Fintech Market

1.1 Evolution of the Fintech Market

Digital Assets

On 1 July 2023, the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the “LCF Law”) came into force. This introduced Guernsey’s first “Virtual Asset Service Provider” (VASP) regime.

Subject to certain limited exemptions, the LCF Law requires VASPs to be licensed with the Guernsey Financial Services Commission (GFSC). VASPs are also specified as a “financial services business” within the scope of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Guernsey AML Law”) and therefore subject to Guernsey’s AML legislation.

Financial Platforms and Intermediation

The LCF Law also imposes a licensing requirement for the operation of a peer-to-peer platform, the operation of a crowdfunding platform, and the provision of alternative non-bank credit or finance intermediation.

2. Fintech Business Models and Regulation in General

2.1 Predominant Business Models

So far only one VASP licence has been issued in Guernsey. Guernsey has, however, seen the launch of a Bitcoin exchange-traded fund (ETF).

Guernsey is also ideally positioned to facilitate the transition to “tokenisation” of traditional financial assets. Guernsey’s Electronic Transactions (Guernsey) Law, 2000 ensures the validity of electronic transactions, data and signatures, and provides clarification on the legal validity of electronic agents and “smart contracts” increasingly utilised in permissioned tokens.

Guernsey also regulates digital representations of fiat currencies and general securities and derivatives as traditional assets, as opposed to virtual assets – meaning that the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the “POI Law”) applies to their issue and operation, rather than classifying the issuers as VASPs (see 2.2 Regulatory Regime for further information). Guernsey’s company law also permits the use of blockchain as the register of members, facilitating greater use of tokenisation as a means of transferring ownership.

2.2 Regulatory Regime

In Guernsey, a fintech business will need to be regulated by the GFSC if it is conducting any class of “controlled investment business” under the POI Law. Controlled investment business means certain “restricted activities” (ie, promotion, subscription, registration, dealing, management, administration, advising, custody, and operating an investment exchange) in respect of “controlled investments” (being collective investment schemes and general securities and derivatives).

A fintech business will (if it is not also conducting an activity requiring a licence under the POI Law) require a licence under the LCF Law if it is carrying on a “financial firm business” (including lending, financial leasing, operating a money service business, facilitating or transmitting money or value through an informal money or value transfer system or network, issuing, redeeming, managing or administering means of payment, providing financial guarantees or commitments, trading in money market instruments, foreign exchange, exchange, interest rate or index instruments, commodity futures transferable securities or other negotiable instruments or financial assets, participating in securities issues, providing settlement or clearing services for financial assets, providing individual or collective portfolio management services or advice, or otherwise investing, administering or managing funds or money on behalf of other persons).

As per 1.1 Evolution of the Fintech Market, if a digital asset business falls within the definition of a VASP, that business is required to be licensed as a VASP with the GFSC under LCF Law. The LCF Law defines “virtual asset” as “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes”. However, virtual assets specifically do not include digital representations of fiat currencies or general securities and derivatives as defined in the POI Law and other financial assets. This means that digital representations of “traditional” assets do not constitute virtual assets.

As per 1.1 Evolution of the Fintech Market, the LCF Law also imposes a licensing requirement for the operation of a peer-to-peer platform, the operation of a crowdfunding platform, and the provision of alternative non-bank credit or finance intermediation.

2.3 Compensation Models

The compensation models used by industry participants to charge customers do not differ from traditional compensation models simply by reason of the fintech nature of their business.

2.4 Variations Between the Regulation of Fintech and Legacy Players

All Guernsey regulatory laws operate on similar principles in connection with the granting of the licence. Separate rules apply to licensees depending upon the regulatory law under which they are licensed. To the extent that a fintech participant is regulated under the POI Law, there will be no difference in the extent of the regulation.

2.5 Regulatory Sandbox

The GFSC uses its “Soundbox” approach when considering potential VASP licensees. As part of this process, when the GFSC initially grants a licence to a VASP applicant it will – in most cases – have a limited duration and may be subject to a number of conditions.

These conditions may include, without limitation:

- restrictions on the volume of business the firm can carry out;
- restrictions on the kinds of business the firm can carry out;

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- more frequent reporting requirements; and
- additional capital and liquidity requirements.

Following completion of the initial period of licensing, the GFSC will decide whether to renew or extend the licence, how long for, and whether to amend any of the restrictions.

Given the diverse nature of potential VASP business models and activities, as part of this process the GFSC may set additional requirements based on the business model and risk profile of potential licensees. Capital and conduct requirements and rules for a virtual asset exchange are likely to be very different to those for a virtual asset custodian, for example.

2.6 Jurisdiction of Regulators

The GFSC is the principal relevant regulator in Guernsey. For data protection, the Office of the Data Protection Authority in Guernsey has jurisdiction.

2.7 Outsourcing of Regulated Functions

Any Guernsey business that is licensed under Guernsey's regulatory laws needs to consider whether the GFSC's outsourcing policies applicable to those regulatory laws apply to any outsourced function.

In the case of a VASP licensee, the core outsourcing principles are as follows.

- The board of a licensee retains responsibility and accountability for the outsourced functions.
- The board of a licensee must be fully aware of and understand the risks arising from outsourcing its functions.
- Due diligence must be conducted in the selection of outsourced service providers and monitoring an outsourced service provider's performance.
- A licensee must ensure that there is a written outsourcing agreement in place for every outsourced activity.
- The licensee must ensure that there is an established and maintained appropriate contingency plan that enables alternative arrangements to be set up, with minimal disruption, in case of the failure of the outsourced service provider or any other breakdown in the provision of services.
- A VASP licensee must not, without the GFSC's written agreement, outsource any function outside the Bailiwick of Guernsey.

2.8 Gatekeeper Liability

Guernsey does not impose any overarching responsibility on fintech providers for the activities of participants on their platforms. If the fintech providers constitute a "financial services business" within the scope of the Guernsey AML Law, they will be subject to Guernsey's AML legislation and therefore required to satisfy client due diligence/KYC obligations and report suspicious transactions.

2.9 Significant Enforcement Actions

There have been no significant enforcement actions by the GFSC in the fintech space.

2.10 Implications of Additional, Non-financial Services Regulations

As a small jurisdiction, Guernsey has not seen a plethora of non-financial services regulations to deal with privacy, cybersecurity, social media content or software development. However, Guernsey has implemented data protection legislation – namely, the Data Protection (Bailiwick of Guernsey) Law, 2017 – and is deemed an "equivalent country" by the EU for the purposes of the EU's data protection laws.

The GFSC has extensive investigation and enforcement powers. If the GFSC learns that a particular business' behaviour is likely to cause reputational damage to Guernsey, it will not hesitate to step in.

2.11 Review of Industry Participants by Parties Other than Regulators

To the extent that a third party licensee is appointed, that third party licensee may have obligations to monitor the activities of industry participants. The most common example of this is where a collective investment scheme is being operated. The designated administrator (a Guernsey licensee firm) is obligated to ensure that the scheme is operated in accordance with its scheme documentation and in accordance with the applicable rules.

Accountants and audit firms have an obligation to report in accordance with their relevant standards but do not "review" the activities of industry participants as such.

2.12 Conjunction of Unregulated and Regulated Products and Services

Generally, industry participants like to segregate their regulated business from their non-regulated business in a separate entity for a variety of reasons, including:

- calculation of regulatory capital requirements;
- reporting to the GFSC;
- accounting;
- segregation of assets and liabilities (and will therefore house the regulated element of their business); and
- ancillary activities (eg, employing personnel and renting office space) can be undertaken by a non-regulated entity.

The GFSC have not issued any formal guidance on the preferred approach. However, it makes the division of responsibilities clearer for the GFSC and makes regulatory supervision easier.

2.13 Impact of AML and Sanctions Rules

See 1.1 Evolution of the Fintech Market.

3. Robo-advisers

3.1 Requirement for Different Business Models

See 2.2 Regulatory Regime.

The provision of investment advice in or from within Guernsey to any person in their capacity as an investor or potential investor in relation to the merits of any assets which are

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classified as “controlled investments” under the POI Law requires a licence under the POI Law (subject to any available exemptions). The definition of “controlled investments” is widely drafted and includes various securities (including shares in companies and debentures) and derivatives, but not fiat cash or cryptocurrencies – although investment advice on these is likely to be caught by the LCF Law as “financial firm business” and be licensed accordingly.

In order to set up an investment business in Guernsey, a company would need to have Guernsey staff and premises, including at least two or three appropriately qualified and experienced local directors (depending upon whether or not the investment business will control client assets) and its own local compliance function. The staff and premises requirements can be outsourced.

The position is the same regardless of whether the investment advice is provided via a traditional investment advisory model or using an automated system such as a robo-adviser.

3.2 Legacy Players’ Implementation of Solutions Introduced by Robo-advisers

The authors’ experience in Guernsey is that, even though a small number of local investment platforms deal in investments on an automated basis with little or no manual intervention, the use of robo-advisers is not widespread.

3.3 Issues Relating to Best Execution of Customer Trades

The GFSC has published *The Licensees (Conduct of Business) Rules and Guidance, 2021* (the “CoB Rules”), which contains a number of high-level principles with which all POI Law licensees must comply. The CoB Rules cover matters such as corporate governance, compliance, accounting, fitness and propriety, client relations, record-keeping, client categorisation, complaints, client assets and conflicts of interest.

The CoB Rules are significantly less prescriptive than the equivalent regulations in many other jurisdictions, such as the UK. They include provisions relating to client order priority, timely execution, and best execution.

4. Online Lenders

4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

The LCF Law draws a distinction between the lending to individuals (broadly, consumer credit and mortgage lending (“regulated agreements”)) and lending to companies. There are significant differences in the regulation applicable to these types of lending, as set out in *The Lending, Credit and Finance Rules and Guidance, 2023*. Additional requirements are imposed on regulated agreements, including disclosures about annual percentage rates and total charges for credit, repayment fees, and restrictions on unfair agreement terms.

Guernsey tax resident companies and partnerships are also required to comply with the Guernsey economic substance regime. In this context, this means those substance requirements applicable to businesses conducting the activity of “financing and leasing” business (ie, agreeing funding terms).

4.2 Underwriting Process

Guernsey law does not specifically provide for the regulation of the underwriting process, which usually takes place onshore. Lenders should therefore ensure they comply with the underwriting requirements of any relevant jurisdiction in which the underwriting process is being conducted.

4.3 Sources of Funds for Loans

Sources of funds for loans could potentially include peer-to-peer, lender-raised capital, taking deposits, and securitisations. The legal and regulatory issues depend upon whether the funds are raised in or from within the Bailiwick of Guernsey.

Lenders carrying on “deposit-taking business” (in summary, using deposits received from one person to lend to another or otherwise finance its activities) in or from within the Bailiwick of Guernsey will need to comply with The Banking Supervision (Bailiwick of Guernsey) Law, 2020, as well as its associated legislation and rules and guidance.

The LCF Law imposes a licensing requirement for the operation of a peer-to-peer platform, the operation of a crowdfunding platform, and the provision of alternative non-bank credit or finance intermediation.

Securitisation vehicles are more lightly regulated in Guernsey, as they are typically not regulated as collective investment schemes.

4.4 Syndication of Loans

Guernsey law does not specifically provide for the regulation of the syndication process, which usually takes place onshore. Lenders should therefore ensure they comply with the syndication requirements of any relevant jurisdiction in which syndication is being conducted.

5. Payment Processors

5.1 Payment Processors’ Use of Payment Rails

There are no restrictions upon the use of existing payment rails or the creation or implementation of new payment rails, provided that payment processors obtain all necessary Guernsey regulatory licences.

The type of licence that is most likely to be required in this context is a licence under the LCF Law as a “financial firm business” (payment processors are likely to be performing the financial firm businesses of “operating a money service business” (see 2.2 Regulatory Regime)). Analysis would need to be carried out on a case-by-case basis as to whether any such licensing requirement would be triggered in the circumstances.

5.2 Regulation of Cross-Border Payments and Remittances

See 2.2 Regulatory Regime and 5.1 Payment Processors’ Use of Payment Rails. If a payment processor carries out any of the following activities by way of business in or from within the Bailiwick of Guernsey, it will generally require a licence under the LCF Law as a “financial firm business” for:

- operating a “money service business” licence (a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing);

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- facilitating or transmitting money or value through an informal money or value transfer system or network;
- issuing, redeeming, managing or administering means of payment;
- providing financial guarantees or commitments;
- money broking;
- money changing;
- providing services for the safekeeping or administration of cash or liquid securities; and
- accepting repayable funds other than deposits.

Please note that, as Guernsey is not a member of the EU, the Payment Services Directive does not apply here.

6. Fund Administrators

6.1 Regulation of Fund Administrators

Guernsey service providers such as fund administrators are regulated by the GFSC. The regulatory law(s) under which they are licensed will depend on their activities. Typical activities and the applicable regulatory laws include the following.

- The POI Law – the following activities by fund administrators are regulated thereunder:
 - (a) subscription (receiving funds or assets for the purposes of investment);
 - (b) registration (recording particulars of a specified investor and issuing a certificate or policy to a specified investor or to the bearer);
 - (c) management (exercising any managerial function in relation to an investment or the assets underlying an investment);
 - (d) administration (providing any administrative, secretarial or clerical services in relation to an investment); and
 - (e) custody.
- The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 – the following activities by fund administrators are regulated thereunder:
 - (a) the formation, management or administration of trusts; and
 - (b) company or corporate administration (which includes a broad range of activities).

6.2 Contractual Terms

Typically, there will be a cap on fees agreed between the fund advisor and the fund administrator. The cap on fees is attributable to:

- a limitation on liability;
- limited carve out for negligence;
- the ability to terminate the contractual agreement; and
- the ability to delegate/outsource administrative functions.

7. Marketplaces, Exchanges and Trading Platforms

7.1 Permissible Trading Platforms

There are no restrictions upon the types of marketplaces and trading platforms that may be used, provided that the regulatory requirements are met in each case. Marketplaces and trading platforms are regulated under different Guernsey laws depending upon the activity being undertaken.

POI Law

The POI Law regulates the restricted activity of “operating an investment exchange”, meaning providing a facility – whether by electronic means or otherwise – for the orderly trading of securities (or for the listing of securities for the purpose of trading) by members of the investment exchange. Persons performing such restricted activities will be required to obtain a licence under the POI Law and adhere to the rules and regulations promulgated thereunder.

LCF Law

As mentioned in 2.2 Regulatory Regime, the LCF Law imposes a licensing requirement for the operation of a peer-to-peer platform, the operation of a crowdfunding platform, and the provision of alternative non-bank credit or finance intermediation.

7.2 Regulation of Different Asset Classes

The Guernsey regulatory regime applicable to asset classes is broadly split into two.

POI Law

The POI Law regulates “controlled investment business”. As explained in 2.2 Regulatory Regime, controlled investment business means certain “restricted activities” (ie, promotion, subscription, registration, dealing, management, administration, advising, custody, and operating an investment exchange) in respect of “controlled investments” (being collective investment schemes and General securities and derivatives). The POI Law can therefore be seen as regulating certain restricted activities in respect of “traditional” asset classes.

LCF Law

The LCF Law regulates “financial firm business”, which covers certain assets (such as currencies, bullion, means of payment and commodities) not otherwise caught by the POI Law, principally to ensure that they are subject to Guernsey’s AML legislation.

The LCF Law also regulates certain activities in relation to “virtual assets”, including:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual asset;
- transfer of virtual assets;
- safe-keeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- participation in and provision of financial services relating to an issuer’s offer and/or sale of a virtual asset.

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7.3 Impact of the Emergence of Cryptocurrency Exchanges

See 2.2 Regulatory Regime and 7.2 Regulation of Different Asset Classes.

7.4 Listing Standards

There are generally no Guernsey-specific requirements regarding the investment exchanges/associated listing standards that must be used by Guernsey based exchanges and trading platforms. However, the GFSC would generally expect any such exchanges to be based in reputable Financial Action Task Force (FATF) jurisdictions.

7.5 Order Handling Rules

See 3.3 Issues Relating to Best Execution of Customer Trades. The CoB Rules cover matters such as corporate governance, compliance, accounting, fitness and propriety, client relations, record-keeping, client categorisation, complaints, client assets and conflicts of interest. In terms of order handling, the CoB Rules cover matters such as client order priority, timely execution, best execution, timely and fair allocation, churning and switching, and staff dealing.

7.6 Rise of Peer-to-Peer Trading Platforms

Historically, peer-to-peer trading platforms in Guernsey have been highly competitive in comparison with traditional trading platforms and they have typically charged lower fees.

In terms of regulation, the POI Law regulates operating an investment exchange. The LCF Law now regulates peer-to-peer platforms relating to lending activity, in addition to regulating crowdfunding platforms through which persons seek to raise money or other finance through the issue of general securities and derivatives.

7.7 Issues Relating to Best Execution of Customer Trades

See 3.3 Issues Relating to Best Execution of Customer Trades and 7.5 Order Handling Rules (the CoB Rules' requirements are the same, regardless of the type of investment business that will execute the trades).

7.8 Rules of Payment for Order Flow

There are no specific Guernsey requirements beyond those set out in the CoB Rules.

7.9 Market Integrity Principles

Guernsey has various primary and secondary legislation covering such activities.

The CoB Rules, which apply to persons licensed under the POI Law, are described in 3.3 Issues Relating to Best Execution of Customer Trades and 7.5 Order Handling Rules. These incorporate the Principles of Conduct of Finance Business (ten fundamental principles applicable to licenses, including integrity, skill, care and diligence, conflicts of interest and open and cooperative dealings with the GFSC).

The Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, as well as the Code of Market Conduct (issued thereunder), set

out restrictions on behaviour amounting to insider dealing and market abuse.

Broadly speaking, market abuse is:

- behaviour based on information that is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by that regular user as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;
- behaviour likely to give a regular user of the market a false or misleading impression as to the supply of (or demand for) or the price or value of investments of the kind in question; and
- behaviour that a regular user of the market would (or would be likely to) regard as behaviour that would (or would be likely to) distort the market in investments of the kind in question.

8. High-Frequency and Algorithmic Trading

8.1 Creation and Usage Regulations

There is no specific regulation that exists for high-frequency and algorithmic trading platforms in Guernsey.

8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity

Guernsey has no specific legislation covering market makers functioning in a principal capacity.

8.3 Regulatory Distinction Between Funds and Dealers

In Guernsey, regulations make a distinction between funds that engage in high-frequency and algorithmic trading and dealers engaged in these activities. If a collective investment scheme (a fund) is carrying on the activities in 8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity, the scheme is not required to obtain a separate regulatory licence, as long as such activities are provided for and on behalf of the scheme. However, if a dealer is engaged in such activities then the dealer may require a licence under the POI Law.

8.4 Regulation of Programmers and Programming

Programmers who develop and create trading algorithms and other electronic trading tools are not themselves regulated.

8.5 Decentralised Finance (DeFi)

There are no specific regulations governing DeFi. Please refer to 12.8 Impact of Regulation on "DeFi" Platforms for further information.

9. Financial Research Platforms

9.1 Registration

Financial research platforms may be required to register for carrying on investment business if such platforms (by way of business) implicitly or explicitly suggest or recommend a particular investment product (which might be considered to constitute the restricted activity of "advising") or if such platforms operate an investment exchange.

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9.2 Regulation of Unverified Information

There is no specific regulation for spreading of rumours and other unverified information. However, this might constitute market abuse or a breach of the GFSC's Principles of Conduct of Finance Business. If the rumours or the unverified information relate to an entity that is regulated by the GFSC, then a formal complaint may be made to the GFSC.

9.3 Conversation Curation

Any platform hosted in Guernsey requires a Guernsey company that will be administered by a Guernsey regulated administrator. The administrator has a duty to maintain transparency with the GFSC. Therefore, if there are "pump and dump" schemes, spreading of inside information, or other types of unacceptable behaviour, then the administrator will take appropriate action.

10. Insurtech

10.1 Underwriting Process

Most insurers still use traditional paper-based underwriting approvals. However, some online portals are in use, with contracts being concluded electronically on servers located in Guernsey. The analysis for this type of activity does not differ markedly from the old-fashioned manual process, but its use has not yet been widespread.

10.2 Treatment of Different Types of Insurance

The carrying on of insurance business is regulated in Guernsey by the Insurance Business (Bailiwick of Guernsey) Law, 2002 (the "Insurance Business Law"). The Insurance Business Law regulates "insurance business" (broadly, the business of accepting risks) carried on in or from within the Bailiwick, classifying such business as "long-term business" (life and annuity, marriage and birth, linked long term, permanent health, capital redemption, pension fund management and credit life assurance) or "general business" (being all other insurance business).

There are some key differences between domestic and international underwriters. Domestic insurers are taxed at 10%, whereas international insurers are taxed at 0%. As the name suggests, international insurers do not write any risks situated in Guernsey. Some of these risks are required to be insured with Guernsey-based or recognised insurers (such as motor vehicle third-party liability).

Business is further divided into long-term and general, as noted earlier. The solvency requirements applicable to long-term insurers differ markedly from those applicable to general insurers.

A Guernsey protected cell company may be regulated to carry on both long-term and general business, but no other form of company is capable of being so licensed. Companies can and frequently do carry on both domestic and international business.

11. Regtech

11.1 Regulation of Regtech Providers

Guernsey providers of regulatory technology ("regtech") may fall to be regulated under one or more of Guernsey's regulatory laws, depending upon their business model and whether or not they

will conduct any of the activities referred to in 2.2 Regulatory Regime. If such providers will simply provide the software to enable other regulated businesses to properly conduct their own activities, it is unlikely that they will be required to be licensed.

11.2 Contractual Terms to Assure Performance and Accuracy

The contractual terms would typically be a matter of industry custom and would cover the usual matters such as scope of work, fees, indemnities and termination provisions. The GFSC's rules and guidance note on outsourcing may require the contract to contain certain matters where the services are provided to entities that are regulated in Guernsey. Please refer to 2.7 Outsourcing of Regulated Functions.

12. Blockchain

12.1 Use of Blockchain in the Financial Services Industry

Financial institutions such as banks and payment service providers are implementing blockchain technology by streamlining payment systems. Banks and payment service providers use blockchain technology to:

- securely store customer information and transaction data;
- improve transaction speed thus ensuring that customer transactions complete quicker;
- intercept suspicious transaction activity; and
- reduce error handling.

Guernsey is also ideally positioned to facilitate the transition to "tokenisation" of traditional financial assets that utilise blockchain technology. Please refer to 2.1 Predominant Business Models.

12.2 Local Regulators' Approach to Blockchain

There are no specific rule proposals or interpretations for blockchain technology in Guernsey. The GFSC is familiar with blockchain technology and has analysed certain activities conducted in respect of blockchains.

By way of example, the act of "mining" itself is not explicitly covered by the list of VASP activities in the LCF Law. However, the GFSC considers it likely that the controller of a mining pool would require a VASP licence under the LCF Law, as they are highly likely to engage in VASP activities as part of business, including transferring shares of mining rewards to contributors to the pool, as well as potentially safe-keeping and/or administration.

As the controller of a mining pool is – in practical terms – validating and processing payments, if they were not required to hold a VASP licence under the LCF Law then they will require licensing as a financial firm business, as they would be carrying out the activity of "facilitating or transmitting money or value through an informal money or value transmission system or network". Please refer to 2.2 Regulatory Regime.

12.3 Classification of Blockchain Assets

Please refer to 2.2 Regulatory Regime and 7.2 Regulation of Different Asset Classes.

12.4 Regulation of "Issuers" of Blockchain Assets

Please refer to 2.2 Regulatory Regime and 7.2 Regulation of Different Asset Classes.

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12.5 Regulation of Blockchain Asset Trading Platforms

Please refer to 2.2 Regulatory Regime and 7.2 Regulation of Different Asset Classes.

12.6 Regulation of Funds

Funds that invest in blockchain assets are regulated within Guernsey's existing fund regime. The GFSC exercises significant scrutiny over these funds. However, as mentioned in 2.1 Predominant Business Models, a Bitcoin ETF has been launched in Guernsey.

12.7 Virtual Currencies

Virtual currencies are not defined or treated any differently to blockchain assets. Please refer to 2.2 Regulatory Regime and 7.2 Regulation of Different Asset Classes. The key factor is whether they are digital representations of fiat currencies or "native" tokens such as bitcoin.

12.8 Impact of Regulation on "DeFi" Platforms

There is no definition of DeFi in Guernsey regulation.

12.9 Non-fungible Tokens (NFTs)

Please refer to 2.2 Regulatory Regime and 7.2 Regulation of Different Asset Classes. An NFT will be considered a "virtual asset". The GFSC does not treat NFTs differently to any other kind of virtual asset in terms of licensing requirements.

13. Open Banking

13.1 Regulation of Open Banking

Guernsey is a leading international finance centre. Open banking is recognised by industry as an opportunity to help boost competition and the variety of products in the banking, credit cards, and payments space.

Although there is no general open banking framework in Guernsey, there are no barriers to banks negotiating individual open banking-style standards and contractual terms with third parties (subject to complying with Guernsey law generally, including the data protection regime). A watching brief is currently being maintained by the States of Guernsey, the GFSC and wider industry on the success of open banking in the UK and local demand.

Guernsey does, however, have various elements that are consistent with supporting open banking. By way of example, although not a member of the EU, Guernsey has introduced the Single Euro Payments Area (Guernsey) Ordinance, 2016, which enables Guernsey banks to participate in the Single Euro Payments Area (SEPA) and therefore make euro payments to and from EU banks subject to the protections and support of the SEPA rules. Guernsey is also a recognised part of the UK payment system and, as such, offers the protections of that system.

Guernsey has also developed a strong digital economy, with the island a world leader in connectivity and digital infrastructure. Its data protection regime and legislation has

also been assessed as fully compliant by the EC for the purposes of the EU General Data Protection Regulation (GDPR), meaning firms can rely on the free flow of data between the Bailiwick of Guernsey and EU member states.

13.2 Concerns Raised by Open Banking

The Data Protection (Bailiwick of Guernsey) Law, 2017 introduced a data protection regime in Guernsey that is largely equivalent to the principles of the GDPR. As such, the issues faced by the EU in balancing the Second Payment Services Directive ("PSD2") (which permits third parties to access account information and offer new financial services) with the requirements of the GDPR (which seeks to protect that information) will need to be similarly addressed in Guernsey. To that end, the authors note that the European Data Protection Board published guidelines on balancing PSD2 and the GDPR, which include obtaining explicit consent from the consumer and taking responsibility for data breaches, and expect Guernsey businesses to be under the same direction. Whether this balance is achieved by blockchain initiatives involving encryption or otherwise are all considerations that can be explored by stakeholders.

14. Fraud

14.1 Elements of Fraud

As a major offshore finance centre, Guernsey is subject to money laundering and terrorist financing risks. In order to meet the international requirements of the FATF, Guernsey has developed a National Risk Assessment (NRA) to help it identify, assess and understand the risks it faces. This better equips the island to mitigate the risks such as the risks of Bailiwick of Guernsey businesses being used to facilitate terrorist financing and the laundering of proceeds-generating crimes like corruption (including illicit enrichment). In December 2023, the Bailiwick of Guernsey carried out its second NRA ("NRA2") of the money laundering and terrorist financing risks it faces.

As with the first NRA, the finding of NRA2 with regard to money laundering risks is that – as an international finance centre with a low domestic crime rate – Guernsey's greatest money laundering risks come from the laundering of the proceeds of foreign criminality. The underlying offences most likely to be involved are bribery and corruption, fraud and tax evasion, followed by drug trafficking.

The money laundering threats from domestic criminality principally relate to drug trafficking, fraud and tax evasion, which are the most significant domestic proceeds-generating crimes. These offences usually involve small-scale activity that is carried out entirely within the jurisdiction and generates low levels of proceeds.

The principal relevance of fraud in Guernsey is therefore foreign fraud resulting in money laundering risks to the island.

14.2 Areas of Regulatory Focus

Please refer to 14.1 Elements of Fraud.

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**PLEASE NOTE**

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2024.

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