



Chambers Global
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Fintech 2024 - Jersey

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BIGGER PICTURE



1. Fintech Market

1.1 Evolution of the Fintech Market

Digital Assets

In 2023, the single biggest evolution in the digital assets space in Jersey has been the introduction of the “Virtual Asset Service Provider (VASP)” regime into Jersey’s AML legislation, the Proceeds of Crime (Jersey) Law 1999 (the “Jersey AML Law”). Prior to this time, in the digital assets space only those businesses that converted fiat to crypto or crypto to fiat were within the scope of the Jersey AML Law.

Now, any VASP is required to register with the Jersey Financial Services Commission (JFSC). The introduction of the VASP regime provides a clear roadmap for digital asset businesses wishing to set up in Jersey and remain compliant with local AML legislation. There has already been an increase in the number of applicants to the island wishing to avail themselves of this registration.

The FATF definition of a “VASP” has been incorporated verbatim into the Jersey AML Law, whereby a VASP is defined as a natural or legal person or arrangement that carries on the business of conducting one or more of the following activities or operations to, for or on behalf of another natural or legal person or arrangement:

- exchange between virtual (ie, digital) assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping or administration of virtual assets or instruments enabling control over virtual assets; and
- participation in and provision of financial services related to an issuer’s offer and or sale of a virtual asset.

Amendment to Jersey’s Financial Services Legislation

Jersey’s principal financial services legislation, the Financial Services (Jersey) Law 1998 (the “Financial Services Law”), was recently amended to bring within the regulatory perimeter the operation of an investment exchange. Among other things, online exchanges that facilitate the trading of securities are now required to obtain an “Investment Business” licence (see 2.2 Regulatory Regime) as a result.

2. Fintech Business Models and Regulation in General

2.1 Predominant Business Models

Digital Assets

A variety of different digital asset businesses have been established, including:

- token issuances (see 2.2 Regulatory Regime);
- OTC digital assets trading platforms;
- crypto backed exchange traded note programmes; and
- investment funds focused on investment into digital assets.

Outside of crypto, Jersey has also seen several businesses set up automated online exchanges and order-matching platforms.

Exchanges/Investment Platforms

Jersey has seen the recent launch of several online exchanges (both for foreign currencies and for the trading of securities).

2.2 Regulatory Regime

Overview of Jersey Regulation

A fintech business will need to be regulated by the JFSC if it is conducting any class of “financial services business” under the Financial Services Law.

The most relevant classes of “financial services business” for the fintech sector under the Financial Services Law are:

- Investment Business – ie, dealing (as agent) in investments, arranging investments, operating an investment exchange, undertaking discretionary investment management, or giving investment advice;
- Fund Services Business – ie, acting as a manager, adviser or other service provider to a fund;
- Trust Company Business – this would be relevant for a custodian where it holds client assets on trust under the terms of an express trust; and
- Money Service Business – ie, operating a bureau de change or transmitting or receiving funds by wire or other electronic means.

Digital Asset Businesses

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 register as VASP with the JFSC under the Jersey AML Law.

Separately, a digital asset business will need to apply to the JFSC for a regulatory licence with the JFSC if it is conducting any class of “financial services business” under the Financial Services Law. As an aside, Jersey deliberately chose not to introduce digital assets specific legislation, but instead decided to regulate crypto/digital assets within its existing financial services legislation. Given the fast pace of development in this area, this has proven to be a wise decision.

Whether a digital asset business falls within the Jersey regulatory perimeter for “Investment Business” depends on whether the relevant digital asset constitutes an “investment” as defined in the Financial Services Law. An “investment” includes a “security”; the relevant definition of a “security” is set out in the JFSC’s Initial Coin Offering Guidance Note (the “ICO Guidance Note”) for token issuance, which provides that a “security” would typically have characteristics usually associated with an equity or debt security in the traditional capital markets sense, including one or more of the following such characteristics (whether contractual or implied):

- a right to participate in the profits/earnings of the issuer or a related entity,
- a claim on the issuer or a related party’s assets,
- a general commitment from the issuer to redeem tokens in the future,

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- a right to participate in the operation or management of the issuer or a related party, and/or
- expectation of a return on the amount paid for the tokens.

Investment Exchanges/Investment Platforms

An investment exchange or an investment platform will require an Investment Business licence from the JFSC.

Online Forex Platforms

Any online forex platform will require a Money Service Business licence from the JFSC.

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

As stated in 2.2 Regulatory Regime, Jersey has chosen not to introduce fintech-specific laws or regulations but instead to try and regulate fintech (including digital assets) within its existing financial services legal and regulatory regime.

2.5 Regulatory Sandbox

Jersey does not operate a “sandbox” as such (unlike the UK’s Financial Conduct Authority). However, any Jersey company, limited partnership or unit trust is issued with a consent by the JFSC under Jersey’s principal regulation relating to the raising of capital in Jersey, the Control of Borrowing (Jersey) Order 1958 (COBO).

The JFSC are able to impose bespoke conditions on a newly incorporated entity’s COBO consent, which has the practical effect of imposing sandbox conditions on the entity. By way of example, the JFSC may decide that a new fintech business’ turnover may not exceed more than a stated amount without the JFSC’s prior consent, thereby limiting the business activities of the entity. In this way, the JFSC can impose sandbox-like conditions on a case-by-case basis, which is enormously helpful.

2.6 Jurisdiction of Regulators

The JFSC is the principal relevant regulator in Jersey. For data protection, the Office of the Information Commissioner in Jersey has jurisdiction.

2.7 Outsourcing of Regulated Functions

Any Jersey business that is either regulated under the Financial Services Law or is registered with the JFSC under Jersey AML Law needs to confirm whether the JFSC’s Outsourcing Policy will apply to any outsourced function.

In summary, where a service provider performs outsourced activity as part of a business’ regulated activity or non-regulated activity and where the service provider’s failure to perform adequate performance of the outsourced activity would materially prevent, disrupt or impact upon the continuing compliance of that business’ regulated activity, such outsourcing activity is caught by the JFSC’s Outsourcing Policy.

The Outsourcing Policy sets out certain core principles as well as detailed guidance thereunder. The core principles are as follows.

- A business is responsible for and accountable to the JFSC for any outsourced activity.
- A business must ensure that any service provider performing outsourced activity is fit and proper.
- A business must put in place an outsourcing agreement with the service provider before the start of the outsourced activity.
- A business must maintain adequate capacity and resources to implement all necessary policies and procedures to ensure that a service provider continues to be fit and proper.
- A business must maintain suitable contingency plans in case a service provider’s performance suffers a material disruption, or ends unexpectedly, for any reason.
- Except for where the policy provides otherwise, a business must complete and submit an outsourcing notification to the JFSC before appointing a service provider.
- A business must ensure there is nothing in the service provider’s performance of the outsourced activity that would prevent or restrict the JFSC regulatory powers in respect of the business or the activity.

If the Outsourcing Policy does apply, the vendor needs to file an outsourcing notification with the JFSC.

2.8 Gatekeeper Liability

There are no express regulations relating to fintech “providers”. However:

- if a fintech provider is subject to the Jersey AML Law, that provider is required to ensure that activities on the platform comply with that law, including carrying out KYC checks on customers; and
- if a fintech provider is carrying on any class of financial services business under the Financial Services Law, the provider is subject to the requirements of the applicable Code of Practice published by the JFSC.

2.9 Significant Enforcement Actions

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

2.10 Implications of Additional, Non-financial Services Regulations

As a small jurisdiction, Jersey has not seen a plethora of non-financial services regulations to deal with privacy, cybersecurity, social media content, or software development. However, Jersey has implemented data protection legislation under the Data Protection (Jersey) Law 2018 and is deemed an “equivalent country” by the EU for the purposes of the EU’s data protection laws.

Note that the JFSC has extensive investigation and enforcement powers. If it comes to the attention of the JFSC that a particular business’ behaviour is likely to cause reputational damage to the island, the FSC will not hesitate to step in.

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2.11 Review of Industry Participants by Parties Other than Regulators

There are no express requirements placed on other vendors (such as lawyers and accountants) in relation to the activities of industry participants. However, such other vendors are keen to preserve Jersey's reputation as a well-regulated financial services jurisdiction and will likely decline to act for marginal industry participants.

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 requirement;
- reporting to the JFSC;
- accounting;
- segregation of assets and liabilities; and
- ancillary activities (eg, employing personnel and renting office space) can be undertaken by a non-regulated entity.

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

2.13 Impact of AML and Sanctions Rules

See 1.1 Evolution of the Fintech Market and 2.2 Regulatory Regime.

3. Robo-advisers

3.1 Requirement for Different Business Models

See 2.2 Regulatory Regime. In addition, the provision of "investment advice" in or from within Jersey (ie, advising as to the merits of buying/selling any assets which are classified as "investments" under the Financial Services Law) will require an "Investment Business" licence (subject to any available exemptions). The definition of "investments" is widely drafted and includes various securities (including shares in companies and debentures) and derivatives, but not fiat cash or non-security cryptocurrencies.

In order to set up an investment business in Jersey, a company would need to have Jersey 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 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

In the authors' experience, although there are a small number of local investment platforms in Jersey that 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 JFSC has published an *Investment Business Code of Practice* (the "IB Code"), which contains a number of high-level principles with which all investment businesses must comply and then drills down into the specifics of the manner in which an investment business must comply with each principle. The IB Code covers matters such as dealing with clients with integrity, corporate governance, systems and controls, and minimum financial resources and insurance and is significantly less prescriptive than the equivalent regulations in many other jurisdictions (eg, the UK).

The IB Code requires that an investment business must have the highest regard for the interests of its client and, to that end, must execute any trades in a timely manner and following best execution principles – for example, by taking reasonable care to ascertain the best possible result at the time for transactions of the kind and size concerned.

4. Online Lenders

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

The regulatory regime applicable to a lender under Jersey law depends on the lender and the activity itself, not the status of the borrower. However, there is ongoing government consultation on such matters, and the authors recommend the position be confirmed at the relevant time. All lenders should therefore be aware as follows.

Lenders carrying on "deposit-taking business" (in summary, using deposits received from one person to lend to another or to otherwise finance its activities) "in or within Jersey" will need to comply with the Banking Business (Jersey) Law 1991, as well as its associated legislation and code of practice.

By comparison, "pure lending" and the extension of credit is not itself an activity that is currently regulated by the Jersey Financial Services Commission (JFSC). However, if lending "as a business" (which is subjective) in or from within Jersey, the lender will be required to be registered under the Jersey AML Law, potentially supervised, and required to comply with the AML regime generally.

Jersey tax-resident companies and partnerships are also required to comply with the Jersey economic substance regime. The activities of "banking business" (ie, activity that requires it to be registered to carry on deposit-taking business) and "finance and leasing business" (ie, providing credit facilities of any kind for consideration with some exceptions) are activities to which the economic substance test may apply.

4.2 Underwriting Process

Jersey 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.

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4.3 Sources of Funds for Loans

Subject to the lender complying with the applicable regulatory regime, AML requirements, and Jersey law generally, the source of its funding to make loans is not restricted.

Accordingly, Jersey has a number of lenders that operate on a peer-to-peer basis by raising capital through issuing securities, by taking deposits and by securitisations.

As mentioned in 4.1 Differences in the Business or Regulation of Loans Provided to Different Entities, lenders carrying on deposit-taking business in or within Jersey will need to comply with the Banking Business (Jersey) Law 1991, as well as its associated legislation and code of practice.

Lenders that are Jersey incorporated or established vehicles raising funds by way of capital will need to comply with the terms of the consent issued to them under the Control of Borrowing (Jersey) Order 1958.

4.4 Syndication of Loans

Jersey 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 vis-a-vis the creation or implementation of new payment rails, provided that payment processors obtain all necessary Jersey regulatory licences. The type of licence that is most likely to be required in this context is a "Money Service Business" licence (see 2.2 Regulatory Regime) and an 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.

A limited exemption is available for companies that have a turnover of less than GBP300,000 per financial period. Nonetheless, they would still need to notify the JFSC of their intention to rely upon that exemption.

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 will carry out any of the following activities by way of business in or from within Jersey, it will generally require a "Money Service Business" licence:

- bureau de change;
- providing cheque-cashing services;
- transmitting or receiving funds by wire or other electronic means; and
- engaging in money transmission services.

The JFSC has published a *Code of Practice for Money Service Business*, which covers broadly similar principles to the IB Code but is significantly less onerous.

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

6. Fund Administrators

6.1 Regulation of Fund Administrators

Jersey service providers such as fund administrators are regulated by the JFSC for conducting "Fund Services Business" under the Financial Services Law and the class of their Fund Services Business (FSB) licence will depend on their activities. FSB activities include the following:

- a manager, manager of a managed entity, administrator, registrar, investment manager or investment adviser;
- a distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent or repurchase agent;
- a trustee, custodian or depositary; or
- a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country or territory outside Jersey.

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 hand over administrative functions.

7. Marketplaces, Exchanges and Trading Platforms

7.1 Permissible Trading Platforms

Jersey-based operators of investment platforms will generally be required to obtain an "Investment Business" licence to deal in investments and operate an investment exchange (see 2.2 Regulatory Regime and 3.1 Requirement for Different Business Models) and will therefore need to comply with the relevant sections of the IB Code. There are no restrictions upon the types of marketplaces and trading platforms that may be used, provided that those requirements are met in each case.

7.2 Regulation of Different Asset Classes

The Jersey regulatory regime generally depends upon the type of activity/investment vehicle, rather than the asset class. However, the JFSC views involvement in digital assets such as cryptocurrencies as a "sensitive activity" for the purposes of its Sound Business Practice Policy (SBPP) and therefore applies greater scrutiny when issuing regulatory consents in relation to vehicles that invest or deal in such assets. See 2.2 Regulatory Regime for further detail regarding the manner in which digital asset businesses may need to be regulated and/or registered as a VASP under the Jersey AML Law.

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 Jersey-specific requirements regarding the investment exchanges/associated listing standards that

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must be used by Jersey-based exchanges and trading platforms. However, where a consent is sought from the JFSC, they 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 IB Code requires investment businesses to treat their clients fairly and sets out the JFSC's requirements regarding matters such as switching and churning, client order priority (including fair allocation), and best execution.

7.6 Rise of Peer-to-Peer Trading Platforms

Historically, peer-to-peer trading platforms in Jersey have been highly competitive in comparison with traditional trading platforms, and they have typically charged lower fees. In terms of regulation, the Financial Services Law has recently been updated to expressly include operating an investment platform (of any nature) as a class of "Investment Business" (see 2.2 Regulatory Regime).

7.7 Issues Relating to Best Execution of Customer Trades

See 3.3 Issues Relating to Best Execution of Customer Trades. (The IB Code requirements are the same, regardless of the type of investment business which will execute the trades.)

7.8 Rules of Payment for Order Flow

There are no specific Jersey requirements beyond the (limited) rules set out in the IB Code.

7.9 Market Integrity Principles

Under the IB Code, an investment business is required to conduct its business with integrity and be fully transparent with the JFSC.

The Financial Services Law sets out criminal offences for matters such as insider dealing and market manipulation. By way of example, it is a criminal offence for any person (regardless of whether or not they are regulated in Jersey) to, among other things, make misleading, false or deceptive statements, promises or forecasts in order to induce another person to enter into an arrangement that constitutes financial services business or exercise/refrain from exercising any right conferred by an investment.

8. High-Frequency and Algorithmic Trading

8.1 Creation and Usage Regulations

There is no specific regulation for high-frequency and algorithmic trading platforms in Jersey.

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

Market makers that are dealing in investments are exempt from registration for carrying on investment business under the Financial Services Law. This exemption is made pursuant to the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001 (the "IB Exemption Order").

8.3 Regulatory Distinction Between Funds and Dealers

If a fund is carrying on the activities in 8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity, the fund is not required to obtain a separate regulatory licence, provided that such activities are provided for and on behalf of the fund. However, if a dealer is engaged in activities in 8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity, then the dealer requires an Investment Business licence under the Financial Services 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 implicitly or explicitly suggest or recommend a particular investment product or if such platforms operate an investment exchange.

9.2 Regulation of Unverified Information

There is no express regulation for spreading of rumours and other unverified information. If the rumours or the unverified information relate to an entity that is regulated by the JFSC, then a formal complaint may be made to the JFSC.

9.3 Conversation Curation

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

10. Insurtech

10.1 Underwriting Process

Jersey does not have any material level of insurance businesses.

10.2 Treatment of Different Types of Insurance

Insurance businesses are required to be regulated under the Financial Services Law for general insurance mediation business as principal or agent if they conduct any of the following activities:

- giving general insurance advice or arranging for persons to enter into contracts of general insurance;
- giving general insurance advice to a person in relation to particular contracts of general insurance;
- arranging for the entry of persons into contracts of general insurance with other persons;

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- assisting in the administration and performance of contracts of general insurance; or
- agreeing to perform any of the above-mentioned activities.

11. Regtech

11.1 Regulation of Regtech Providers

Jersey providers of regulatory technology (“regtech”) may fall to be regulated under the Financial Services Law, 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 under the Financial Services Law.

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 JFSC’s Outsourcing Policy may require the contract to contain certain matters where the services are provided to entities that are regulated in Jersey – for example, to enable the JFSC to access the records and premises of the regtech provider if needed in connection with the regulated entity’s activities.

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.

12.2 Local Regulators’ Approach to Blockchain

There are no specific rule proposals or interpretations for blockchain technology itself in Jersey.

12.3 Classification of Blockchain Assets

Not all blockchain assets are regulated financial instruments. Blockchain assets such as cryptocurrencies and/or tokens are treated as another asset class within Jersey’s existing financial services legislation. The key factors are the underlying purpose of the tokens and whether they are tradeable or transferable. Please refer to 2.2 Regulatory Regime for details of the classification of tokens in Jersey.

12.4 Regulation of “Issuers” of Blockchain Assets

The JFSC’s ICO Guidance Note requires issuers of blockchain assets to comply with certain requirements in order to issue blockchain assets such as cryptocurrencies and tokens. As mentioned in 7.2 Regulation of Different Asset Classes, the JFSC views crypto as a “sensitive activity” under the JFSC’s SBPP. On that basis, any Jersey issuer of a cryptographic coin or token

will need to comply with the requirements relating to the relevant category of token under the ICO Guidance Note (which will vary according to factors such as whether or not the token is a security token) and obtain a bespoke COBO consent from the JFSC.

12.5 Regulation of Blockchain Asset Trading Platforms

Blockchain asset trading platforms that facilitate the trading of security tokens will require an Investment Business licence under the Financial Services Law. Even if the blockchain assets do not constitute security tokens and therefore would not trigger the foregoing requirement, the JFSC regards crypto as a sensitive activity so the trading platform would still be subject to quasi-regulation by the JFSC.

In the event that the operator of the trading platform may be considered a VASP, then it would be required to register for AML purposes in accordance with the Jersey AML Law. This is an in-depth process.

12.6 Regulation of Funds

Funds that invest in blockchain assets are regulated within Jersey’s existing fund regime. During the past few years, Jersey has seen an increase in the number of private funds that invest in blockchain assets such as crypto-assets. The JFSC exercises more scrutiny over these funds, as crypto is a “sensitive activity” under the SBPP (see 7.2 Regulation of Different Asset Classes).

Over and above the requirements applicable to Jersey funds, the JFSC generally expects funds that invest in crypto-assets to meet the following requirements:

- must have a prospectus setting out all the details of the fund;
- the prospectus must include appropriate risk factors relating to the crypto-assets that the fund will be investing in;
- the fund must have credible and regulated service providers such as custodians; and
- the fund must be strictly targeted at professional and institutional investors.

12.7 Virtual Currencies

Jersey does not have the concept of a virtual currency or a blockchain asset. However, the Jersey AML Law defines a “virtual asset” as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.

12.8 Impact of Regulation on “DeFi” Platforms

There is no definition of DeFi in Jersey. Jersey has seen the launch of a DeFi protocol, which utilised the JFSC’s ICO Guidance Note framework to issue its native token XRD from Jersey. The ICO Guidance Note has general requirements that must be met by all ICO issuers.

12.9 Non-fungible Tokens (NFTs)

The regulation of NFTs and the NFT platform depends on whether or not the issuer of the NFT is raising capital by issuing the NFT. If, for example, the NFT is issued purely on a reward basis and there is no remuneration for such issuance, then

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there is no need to obtain a bespoke ICO COBO consent from the JFSC. However, if the issuer of the NFT is raising capital by issuing the NFT, then a bespoke ICO COBO consent is required.

From an AML perspective, the issuer of the NFT may need to register as a VASP if the NFTs are issued on behalf of third parties and are issued by way of business.

13. Open Banking

13.1 Regulation of Open Banking

Jersey is a leading international finance centre and 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. While there is no general open banking framework in Jersey, there are no barriers to banks negotiating individual open banking-style standards and contractual terms with third parties (subject to complying with Jersey law generally, including the data protection regime). A watching brief is currently being maintained by the Jersey government, Jersey Finance, Digital Jersey, the JFSC and wider industry on the success of open banking in the UK and on local demand.

Jersey does, however, have various elements that are consistent with supporting open banking. By way of example, even though it is not a member of the EU, Jersey has introduced the EU Legislation (Payment Services – SEPA) (Jersey) Regulations 2015, which enable Jersey 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. Jersey is also a recognised part of the UK payment system and, as such, offers the protections of that system.

Jersey 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 EU General Data Protection Regulation (GDPR), meaning firms can rely on the free flow of data between the island and EU member states.

13.2 Concerns Raised by Open Banking

The Data Protection (Jersey) Law 2018 introduced a data protection regime in Jersey 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 Jersey. 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 Jersey 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

Jersey law recognises fraud (*dol*) as both a customary law crime and as a defect that can cause a contract to become voidable at the instance of the innocent party. Fraud (*dol*) is defined widely as any method by which one person might deceive another, including fraudulent misrepresentation. The principal element of fraud (*dol*) is dishonesty. The customary law crime of fraud (*dol*) must be proved beyond a reasonable doubt. A civil law (eg, contractual) claim based on fraud (*dol*) must be proved on a balance of probabilities, based on cogent evidence.

Regulated businesses, including those that are subject to supervised AML regulation (eg, VASPs), are required to apply systems and controls that effectively combat financial crime risk. The consequence of this regulatory regime is that, in practice, the crime of fraud (*dol*) is rarely charged in the financial services context (there are no criminal cases of fraud (*dol*) in the context of fintech). Equally, while contractual claims based on fraud (*dol*) do come before the Jersey courts from time to time, it is rare for these cases to arise in the context of financial services.

14.2 Areas of Regulatory Focus

The regulator will be concerned with both fraud that occurs inside a regulated business (eg, where an employee of a regulated business has used their position to perpetrate a fraud) and where the regulated business has been the victim of fraud. Both situations could mean that there has been a failure of systems and controls within the regulated business and both situations have the potential to jeopardise Jersey’s reputation as a safe and reliable jurisdiction for financial services and fintech. As such, the regulator would want to understand whether systems and controls have failed and – if so – why have they failed and what will be done to ensure that such failure does not occur in future.

When a fraud has taken place, the regulator will usually place emphasis on whether customers have been adversely affected and – if so – how that will be remediated. Equally, since the principal element of fraud (*dol*) is dishonesty, the regulator will be concerned with determining whether the incident places at issue the fitness and propriety of a regulated business or any person working within a regulated business.

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Chris has broad experience of general international corporate and funds work. He has particular expertise in private equity, hedge and digital asset funds, having spent ten years as a corporate and funds lawyer in London. Chris advises on all aspects of fund and corporate transactions (including the legal and regulatory aspects of fund launches) and joint ventures. As part of the Jersey funds team, he also has considerable experience in dealing with the Jersey Financial Services Commission as regards navigating investment vehicles through the Jersey regulatory approval process. He also spearheads Carey Olsen's digital assets practice, having advised on a series of token issuances, digital asset funds and exchanges.

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Sophie is a member of Carey Olsen's Jersey funds team who advises fintech and digital asset businesses on the Jersey legal and regulatory register applicable to their products. Sophie's notable fintech matters in 2022 included advising CoinShares both on the launch of its exchange and basket securities exchange-traded products (ETPs) and on the refresh of its single coin prospectus. She also advised on launches by Global X ETFs (of two ETPs) and Phillip Street Partners (of PSP Digital Macro Fund Limited), as well as the launch of Play Ventures' venture capital blockchain and metaverse gaming fund. In addition, Sophie advised on Valour Inc's new digital asset ETPs programme in Jersey.

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**PLEASE NOTE**

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