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Walkers is a leading international firm that provides legal, corporate and fiduciary services to global corporations, financial institutions, capital markets participants and investment fund managers. Clients are Fortune 100 and FTSE 100 companies as well as the most innovative firms and institutions across the financial markets. The firm has ten offices, in Bermuda*, the British Virgin Islands, the Cayman Islands, Dubai, Guernsey, Hong Kong, Ireland, Jersey, London and Singapore. It advises businesses partnering with or investing in FinTech firms as well as financial institutions and asset managers developing their own FinTech products and services. The FinTech group, which consists of 14

partners and 17 other qualified lawyers globally, also works closely with policymakers, regulators and governments to facilitate appropriate legislation and regulation that keeps pace with innovation. Walkers covers FinTech's core financial industry sectors – asset management, investment, banking, finance, insurance and payments – with particular expertise of advising businesses specialising in blockchain, digital assets and alternative model finance.

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1. FinTech Market

1.1 Evolution of the FinTech Market

Since the announcement of its FinTech strategy in November 2017, the Bermuda Government has sought to position Bermuda as a market-leading jurisdiction with respect to FinTech, with a view to Bermuda operating as an innovation hub for businesses seeking to conduct operations utilising new technologies or to deploy new technologies to provide services and solutions for other business sectors.

The Bermuda Government, along with Bermuda's sole financial services regulator (the Bermuda Monetary Authority – "BMA"), have taken a collaborative approach and, with the assistance of technical advisers from other pioneering jurisdictions and participation across Bermuda's private industry sectors, have developed a robust and effective but fit-for-purpose legal and regulatory framework that will offer adequate

protection for customers and investors while encouraging and fostering innovation.

Bermuda operates one of the largest (re)insurance markets in the world, which itself is a sector that is known for cutting-edge risk solutions and innovative alternative risk structures. The BMA is able to leverage its experience in supervising and regulating companies in the (re)insurance sector (from start-ups to global giants) to build a risk-based, proportionate but flexible regulatory regime that is dynamic and receptive to the needs of digital assets businesses and the rapid deployment of distributed ledger and other technologies.

The past 12 months have seen a flurry of legislation, regulation and initiatives in the FinTech sector in Bermuda, including (among other things):

- amendments to the Companies Act, 1981 (the "Companies Act") to regulate the conduct of initial token

offerings in a similar manner to initial public offerings of shares;

- the enactment of the landmark first-in-class Digital Assets Business Act 2018, which provides for the licensing and supervision of digital assets business activities in Bermuda along with associated codes of practice, statement of principles, client disclosure rules, cybersecurity rules and sector-specific anti-money laundering and anti-terrorist financing guidelines, specifically tailored to the digital assets business sector;
- amendments to the Banks and Deposit Companies Act 1999, to provide for a special class of banking licence to promote the establishment of banking institutions in Bermuda offering a full range of banking services to the FinTech sector; and
- amendments to the Insurance Act 1978, to create a special class of insurance regulatory sandbox licence to be issued by the BMA for innovative insurers, insurance managers and other insurance intermediaries.

In doing so, Bermuda intends to embrace and enable the acceleration of digital assets businesses from within Bermuda, while protecting its long-standing reputation as one of the world's leading offshore financial centres. FinTech businesses, investors and financiers will find in Bermuda a highly developed ecosystem, which benefits from a sophisticated legal system; a significant wealth of intellectual capital; regulatory sandboxes; an innovation hub; a significant customer base; and a progressive Government and regulator seeking to establish Bermuda as a leading jurisdiction for FinTech, while maintaining and, in some cases, establishing international standards that protect investors, customers and other stakeholders.

2. FinTech Verticals

2.1 Predominant Business Models

Bermuda is currently home to a variety of different blockchain business models and there is currently no predominant model. These business models cover a wide range of industry sectors, including investment funds, fund managers and administrators, payment service providers, financial services businesses, digital assets exchanges and trading platforms, insurance companies, managers and intermediaries, custodians and custodial wallet providers, RegTech businesses and companies seeking to raise capital and fund products or services through token offerings. To the extent that blockchain is utilised by a company for the purpose of fundraising or otherwise, it will be regulated depending on the business model concerned.

2.2 Regulatory Regime

The Companies and Liability Company (Initial Coin Offering) Amendment Act 2018 (the "Token Offering Legislation") became operative with effect from 9 July 2018. It

amends the Companies Act and the Limited Liability Company Act 2016, and creates a statutory framework for the regulation of token offerings. The Minister of Finance has also issued the Companies (Initial Coin Offering) Regulations 2018 and the Limited Liability Company (Initial Coin Offering) Regulations 2018 (together, the "Token Offering Regulations"), which expand upon certain requirements under the Token Offering Legislation.

The Token Offering Legislation captures any person who wishes to conduct an offer to the public for the purchase or acquisition of 'digital assets' in or from within Bermuda. Such person is required to incorporate a company or limited liability company and, because the conduct of such an offer to the public is categorised as a 'restricted business activity', to seek the consent of the Minister of Finance prior to launching the offer.

Under the Token Offering Legislation, the term 'digital asset' is defined very broadly and covers anything that exists in binary format and comes with the right to use it and includes a digital representation of value that is:

- used as a medium of exchange, unit of account or store of value (other than fiat currency);
- intended to represent assets such as debt and equity in the issuer of the offer or digital asset (or other type of promoter);
- otherwise intended to represent any assets or rights associated with such assets; or
- intended to provide access to an application, service or product by means of distributed ledger technology.

As such, the Token Offering Legislation captures most forms of digital coins, cryptocurrencies and all types of token offerings (whether they are categorised as security, equity, utility or other forms of tokens for other jurisdictions' regulatory purposes). The Token Offering Legislation does not regulate transactions in which a person grants value as part of an affinity or rewards programme (provided value cannot be taken from or exchanged for fiat currency, bank credit or any digital asset), or a digital representation of value used by a publisher within an online gaming platform.

The application for the consent of the Minister must include the following 'minimum required information':

- details of all parties involved in the offering and whether they are authorised under any other laws;
- key features of the product or service and technologies used, means of financing and allocation of funds;
- information concerning the digital asset, including when it will be created and transferred to the participants and the proposed functionalities;

- details concerning the proposed transfer or trade of the digital assets and whether it can be used to pay third parties or buy goods and services; and
- information concerning compliance issues.

A person conducting a public offer for the purchase or acquisition of digital assets will be required to publish an offer document and file it with the Bermuda Registrar of Companies, in a similar manner to the requirements under the Companies Act for companies seeking to conduct an initial public offer of shares. The offering document is usually based on the White Paper, with the addition of the information required under the Token Offering Legislation, including:

- details of the registered or principal office of the promoter and the officers of the promoter;
- the business or proposed business of the company;
- a description of the project and proposed timelines, including any milestones;
- the amount of money intended to be raised;
- details of the allocation of such amounts;
- any rights or restrictions on the digital assets being offered;
- the timing of the opening and closing of the offer;
- a general risk warning in the prescribed form; and
- a statement as to how personal information of the participants is being used.

Companies that are subject to the Token Offering Legislation must comply with the continuing obligations set out therein and under the Token Offering Regulations. These include having in place appropriate measures relating to identification and verification of the identity of participants in the offer, in compliance with the applicable Bermuda anti-money laundering and anti-terrorist financing legislation and regulations (the “AML/ATF Requirements”), recordkeeping and an internal audit requirement for compliance purposes.

The Digital Asset Business Act 2018 (“DABA”) came into force in October 2018 and creates a statutory licensing framework for digital assets businesses and services to be operated within a regulated environment in Bermuda under the supervision and oversight of the BMA.

DABA regulates the following ‘digital asset business’ activities where they are conducted by any entity in or from within Bermuda (whether incorporated or formed in Bermuda or not):

- issuing, selling or redeeming virtual coins, tokens or any other form of digital asset;
- payment service-provider business utilising digital assets;
- operating an electronic exchange whereby digital assets of any type are exchanged for cash or other digital assets;
- the provision of digital assets custodial wallet services; and

- digital asset services vendors (including custodians).

The term ‘digital asset’ for the purpose of DABA has the same meaning as under the Token Offering Legislation described above.

DABA requires any person conducting digital asset business activities in or from within Bermuda (unless specifically exempted) to be licensed by the BMA. There are two classes of licence: a Class F (or full) licence or Class M (modified) licence.

The Class M Licence is designed to operate as a ‘regulatory sandbox’ from which licensed undertakings will migrate to a full Class F licence once proof of concept or the other requirements of the modifications has been established or satisfied. It is particularly appropriate for start-ups who may not be able to meet all of the licensing criteria initially, and the Class M Licence will accordingly be modified by including a defined period and restrictions on operations that the BMA considers appropriate in the circumstances.

A Class F licence is a full licence and not subject to a defined time period but may have restrictions placed upon it where the BMA considers it necessary to do so, having regard to the proposed business operations.

Applications for licences must be accompanied by a detailed business plan, details of beneficial owners, directors, officers, proposed staffing and financial projections, controls and risk-management and governance framework, including AMT/ATF policies and procedures, which must be in place and submitted with the application for consideration by the BMA.

The BMA will not issue a licence under DABA unless it is satisfied that the minimum licensing criteria have been met in respect of the applicant. These criteria are similar to those applicable to other regulated business sectors in Bermuda (such as insurance, insurance managers, investment funds, fund managers and administrators) and include the following requirements:

- the ‘controllers’ (managing directors, CEOs, shareholder controllers (owning or controlling more than 10%) and persons in accordance with whose instructions or directions the business is accustomed to acting) must be ‘fit and proper’, and full credentials will be required;
- the business must be conducted in a prudent manner (taking into account any failure to comply with the provisions of DABA, AML/ATF Requirements and international sanctions measures, Codes of Practice and other rules issued by the BMA under DABA). A business will be deemed not to be conducted in a prudent manner if it does not maintain minimum net assets of USD100,000 or such other amount as the BMA considers appropriate,

taking into account the nature, size and complexity of the particular business;

- the business must have appropriate insurance and other risk mitigation measures as the BMA approve;
- the business must maintain adequate accounting records, control systems, policies and procedures, and implement appropriate corporate governance measures; and
- the business must be effectively directed by at least two directors and under the oversight of however many non-executive directors as the BMA considers appropriate given the nature, size and complexity of the business.

Companies licensed under DABA must maintain a head office in Bermuda from which the business is directed and managed; in considering whether this requirement is met, the BMA will take into account factors such as the location and residence of directors and senior executives, and whether board meetings and strategic decisions take place in Bermuda (among other things).

DABA licensed entities must also demonstrate a comprehensive cybersecurity programme that is commensurate to the nature, size and complexity of the business and a written cybersecurity policy, in each case, that is reviewed and subject to an external audit, annually.

2.3 Variations Between the Regulation of FinTech and Legacy Players

The above legislation only covers participants that are offering digital assets to the public for the purchase or acquisition of digital assets or conducting digital assets business activities in or from within Bermuda.

2.4 Regulatory Sandbox

As noted above, the concept of a regulatory sandbox is built into DABA, which enables businesses seeking to be innovative and involved in the testing of new products or services utilising digital assets to apply for a Class M licence.

In addition, the BMA recognises the importance of disruptive innovation in the insurance and wider financial industry and the critical role that innovation plays in promoting efficiency and enhancing competitiveness in these markets. To this end, the BMA has established two parallel innovation tracks, namely:

- an insurance regulatory sandbox to cater to companies that are seeking subsequent licensing as insurance entities or insurance intermediaries under the Insurance Act, 1978. The sandbox will allow companies to test new technologies and offer innovative products, services and delivery mechanisms to a limited number of policyholders (or other clients) in a controlled environment for a limited period of time. The BMA will review applications for the sandbox and will determine the appropriate legislative and the regulatory requirements that should be

modified during the period within the sandbox. Companies within the sandbox will be issued a special class of licence (designated with the prefix “I” for ‘innovative’) and may migrate to an existing class once the sandbox has been completed successfully; and

- an ‘Innovation Hub’ to promote dialogue between those who desire to work closely with the BMA to receive regulatory guidance on standards and expectations related to innovative insurance solutions. The idea is that the Innovation Hub will also serve as a platform for the exchange of ideas and information, and will be used by companies at an early stage, prior to applying for entry into the insurance regulatory sandbox.

2.5 Jurisdiction of Regulators

The BMA is the sole financial services regulator and controller for foreign exchange control purposes in Bermuda. To the extent that digital assets issuers are offering digital assets in other countries, or making services or products utilising blockchain available in other countries, the applicable regulators in those countries may also have jurisdiction to the extent that such offering of products or services is regulated in those other countries.

2.6 Outsourcing of Regulated Functions

DABA contemplates that certain regulated functions may be outsourced to third parties, including asset management, custodial services, cybersecurity, compliance and internal audit functions required under DABA. The BMA has published detailed guidance on outsourcing generally and in the Digital Asset Business Act Code of Practice 2018 specifically in relation to businesses that are licensed under DABA. The overarching principle is that such action does not remove the responsibility from the digital assets business to ensure that all requirements of DABA and related legislation (including AML/ATF Requirements) and the Code of Practice are complied with to the same level as if they are performed in-house. The directors of the licensed entity must ensure that there is oversight and clear accountability for all outsourced roles, and that the related service agreements include terms on compliance with jurisdictional laws and regulations. Such agreements should not prohibit the BMA’s access to data and records in a timely manner. The BMA will want information concerning any material outsourcing arrangements. While there is no list of recognised equivalent jurisdictions for the purposes of approving outsourcing arrangements, it is understood that outsourcing to an entity that is regulated by a competent jurisdiction that applies equivalent standards to those applied in Bermuda would be preferable. For the purposes of meeting AML/ATF Requirements, the outsourced entity must comply with the requirements under Bermuda’s AML/ATF laws and regulations.

2.7 Significant Enforcement Actions

The BMA has granted enforcement powers under DABA which include the imposition of civil penalties of up to

USD10,000,000, the issue of prohibition orders, public censures and injunctions. The BMA also has the ability to demand production of any information required, and can restrict or revoke licences where a licensed undertaking is not in compliance with DABA and rules and regulations promulgated thereunder.

There have not been any enforcement actions by regulators in respect of blockchain businesses under DABA to date.

2.8 Implications of Additional Regulation

Digital asset businesses and companies offering digital assets to the public will be subject to Bermuda's laws relating to privacy. The Personal Information Protection Act 2016 ("PIPA") is the principal Bermuda statute regarding the regulation of personal data. Although various provisions under PIPA came into force on 2 December 2016 to enable the appointment of the Privacy Commissioner, the majority of PIPA was scheduled to come into force at the end of 2018. However, PIPA has still not come into force as of March 2019.

PIPA generally applies to every organisation that uses personal information in Bermuda, either wholly or partly, by manual or electronic means. Since FinTech businesses typically use a significant degree of personal information, they may require compliance with PIPA.

Once PIPA substantively takes effect, an organisation transferring personal information to an overseas third party, either on behalf of the organisation or for its own business purposes, shall remain responsible for compliance with PIPA in relation to that personal information. This will include an assessment of the level of protection provided by the overseas third party for that personal information.

If the organisation is not satisfied that the level of protection provided by the overseas third party is comparable to the level of protection required by PIPA, the organisation shall employ contractual mechanisms and corporate codes of conduct, including binding corporate rules or other means to ensure that the overseas third party provides a comparable level of protection.

An organisation is not required to comply with these rules if the transfer of personal information to an overseas third party is necessary for the establishment, exercise or defence of legal rights, or if, following the assessment of the organisation, the transfer is reasonably considered to be small-scale, occasional and unlikely to prejudice the rights of an individual.

Bermuda companies may also be subject to the privacy laws of other jurisdictions to the extent that they have extra-territorial effect (including GDPR).

Licensed undertakings under DABA will become 'regulated financial institutions' for the purposes of the AML/ATF Requirements and will be required to comply with all Bermuda applicable legislation, along with other 'regulated financial institutions.' This may mean that FinTech businesses that require a licence under DABA are subject to more stringent AML/ATF Requirements than FinTech businesses that do not. Banks, insurance companies, investment funds and fund administrators are also 'regulated financial institutions' for the purposes of the AML/ATF Requirements. The BMA has issued detailed sector-specific guidance for digital assets businesses that are regulated financial institutions, which requires them to adopt a risk-based approach to obtaining adequate due diligence on and verifying the identity of its clients and to require ongoing monitoring and report any suspicious activities.

Companies that are conducting public offers of digital assets are also required to identify and verify participants in the offer, and to comply with the AML/ATF Requirements set out in the Token Offering Regulations. If a company is unable to comply with such AML/ATF Requirements, it is prohibited from opening an account or issuing a digital asset to such person, and must terminate the business relationship. Such requirements do not apply to a company that is offering shares to the public, unless that company is a regulated financial institution for the AML/ATF Requirements.

The Token Offering Legislation and DABA contain detailed cybersecurity requirements. The BMA has issued Cybersecurity Rules, which apply to licensed undertakings and require a comprehensive cybersecurity programme and an external annual audit.

2.9 Regulation of Social Media and Similar Tools

There is no specific regulation capturing social media or similar tools in Bermuda, but businesses that use personal information – either wholly or partly, by manual or electronic means – will be subject to PIPA, as described above.

2.10 Review of Industry Participants by Parties Other Than Regulators

Bermuda licensed banks and service providers to the financial services sector are keenly reviewing the environment and their own ability to provide services to Bermuda's FinTech businesses.

Bermuda's audit firms (particularly the Big Four present in Bermuda) are actively reviewing the requirement for audited financial statements under DABA to determine how they can service this need, given the absence of international accounting standards applicable to this sector. Such firms are collaborating with the BMA to determine mutually acceptable ways to satisfy this requirement.

The Banks and Deposit Companies Amendment Act 2018 (the “Banks Act”) was enacted by the Bermuda Government to remove an impediment to the ability of banks and lending institutions to service the FinTech sector, given the initial reticence of Bermuda’s incumbent banks to provide banking services to the sector. The amendments permit the issue of restricted banking licences to banks wishing to provide services to FinTech businesses, which do not require the establishment of a retail business on the island. Further, certain banks that are not situated in Bermuda have confirmed their willingness (subject to meeting compliance standards) to provide a full range of banking services to Bermuda-licensed FinTech businesses.

It is expected that custodians and other digital assets service vendors, including those seeking to assist FinTech businesses in satisfying the AML/ATF Requirements, are also actively reviewing the legislative framework and Bermuda’s environment generally to take advantages of current and future opportunities to serve this sector.

2.11 Conjunction of Unregulated and Regulated Products and Services

As a result of the wide scope of the Token Offering Legislation and DABA and, in particular, the definition of ‘digital assets’ for the purposes of this legislation, it is anticipated that most companies seeking to conduct public token offerings or conducting digital assets business activities utilising blockchain will fall within said scope. Those that do not (because they are conducting the activities solely for the purpose of their own business operations or those of a subsidiary) would not be caught.

3. Online Lenders

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

There are no significant differences for lending to individuals, small business or others. However, any person who wishes to provide deposit-taking business in or from within Bermuda is required to hold a licence under the Banks Act.

As noted in **2.10 Review of Industry Participants by Parties Other Than Regulators**, above, the Bermuda Government has recently enacted legislation creating a new restricted banking licence. The restricted banking licence allows applicants outside the jurisdiction to become licensed under the Banks Act to provide banking services in Bermuda to entities that are licensed under DABA without the requirement for a retail presence in Bermuda.

3.2 Underwriting Processes

There is no additional regulation for industry participants other than those provided for under the Banks Act and the associated regulations and guidance.

3.3 Sources of Funds for Loans

Under Bermuda law, the legal and regulatory landscape does not distinguish between the sources of funds or loans. Any entity providing banking or deposit-taking activities within the meaning of the Banks Act will be subject to the licensing requirements under the Banks Act if such activities are being conducted in or from Bermuda.

3.4 Syndication of Loans

The on-sale or syndication of a loan and the sale of one or more participations in a loan to a Bermuda company are fairly common. Most sales, syndications or participations will be governed by the same law as that of the underlying loan agreement, which would not typically be Bermuda law.

4. Payment Processors

4.1 Payment Processors’ Use of Payment Rails

There is no requirement under Bermuda law for payment processors to use existing payment rails.

If the payment processor provides any or all of the following ‘money service business activities’ to the general public in Bermuda (excluding any entity licensed under the Banks Act), then (unless exempted) it will require a licence to do so from the BMA under the Money Service Business Act 2016:

- money transmission services;
- cashing cheques which are made payable to customers and guaranteeing cheques;
- issuing, selling or redeeming drafts, money orders or traveller’s cheques for cash;
- payment service business; and
- operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.

5. Fund Administrators

5.1 Regulation of Fund Administrators

All fund administrators who conduct business in or from within Bermuda are required to be licensed by the BMA in accordance with the Investment Funds Act 2006, under which a fund administrator is any person that conducts any one of the following activities:

- applying the subscription monies received by a fund in accordance with its constitution and its prospectus;
- processing the issue, conversion and redemption of units of a fund;
- applying the income of a fund in accordance with its constitution and its prospectus;
- calculating the net asset value of the units, and their issue, conversion and redemption price;
- maintaining the accounts of a fund; and

- distributing to the participants of a fund all dividends or other distributions which may from time to time be declared and paid by it on units in a fund.

5.2 Contractual Terms

It is customary for funds and their advisers to require contractual commitments from the fund administrator, including in relation to compliance with AML/ATF Requirements, the implementation of effective internal controls to support services, and the requirement to exercise due care and diligence and act in good faith in the performance of services under its agreement at all times. Such terms are not dictated by regulation but rather contractual negotiation and market practice.

5.3 Fund Administrators as ‘Gatekeepers’

Under the Proceeds of Crime Act 1997 (as amended), a licensed fund administrator is a regulated financial institution and as such is subject to Bermuda’s AML/ATF Requirements. As part of the AML/ATF Requirements, the fund administrator is required to report all suspicious activity of which it has knowledge or suspicion to the Financial Intelligence Authority through its online portal goAML. Failure to do so is an offence under the AML/ATF Requirements and may result in a financial penalty and/or criminal prosecution.

6. Exchanges and Trading Platforms

6.1 Permissible Trading Platforms

Anyone who operates an electronic exchange in Bermuda for the purposes of DABA is permissible as a trading platform. ‘Exchange’ means to assume control of digital assets from or on behalf of a client, to sell, trade or convert:

- digital assets for fiat currency, bank credit or one or more forms of digital assets; or
- fiat currency or bank credit for one or more forms of digital assets.

Provided the trading platform falls within this definition, it is permissible if licensed under DABA.

With respect to the trading of securities that are not forms of digital assets, the Bermuda Stock Exchange is one of the world’s pre-eminent fully electronic, offshore securities exchanges, offering a variety of domestic and international listing services for debt and equity securities. The BSX’s trading, settlement and depositary platform is licensed by NASDAQ OMX and is specifically designed to support the secondary market trading and settlement of both equity and fixed income securities. The definition of equity and debt securities under the Bermuda Stock Exchange’s Listing Regulations (the “Listing Regulations”) does not capture digital assets (as such term is defined under DABA).

In addition, any exchange that is established in Bermuda will also need to consider whether it is required to be licensed as a recognised exchange under the licensing requirements under the Investment Business Act 2003 (as amended) (the “IBA”).

6.2 Regulation of Different Asset Classes

Please refer to **6.1 Permissible Trading Platforms**.

6.3 Impact of the Emergence of Cryptocurrency Exchanges

The emergence of cryptocurrency exchanges has resulted in the Bermuda Government establishing DABA and the licensing regime in Bermuda, as described above. Accordingly, most if not all cryptocurrency exchanges are required to be licensed if established in Bermuda in accordance with DABA, as described above.

6.4 Listing Standards

At this point, the BMA has not stipulated any listing standards for the purposes of electronic exchanges licensed under DABA; such exchanges are free to determine their own standards in accordance with industry norms.

As noted above, an exchange that wishes to be established in Bermuda will also need to consider whether it should apply to be an investment exchange under the IBA. Any exchange that is licensed under the IBA will be required to produce its own listing rules and certain required particulars, as set out under the IBA.

As noted above, debt and equity securities listed on the Bermuda Stock Exchange will be required to comply with the applicable sections of the Listing Regulations.

6.5 Order-handling Rules

This is not applicable in Bermuda. See **6.4 Listing Standards**, above.

6.6 Rise of Peer-to-Peer Trading Platforms

Any peer-to-peer trading platforms would also be captured under DABA and as such would be required to meet the same regulatory standards as an exchange, if they are conducting such activities in Bermuda.

6.7 Issues Relating to Best Execution of Customer Trades

This is not applicable in Bermuda.

6.8 Rules of Payment for Order Flow

This is not applicable in Bermuda.

7. High-frequency and Algorithmic Trading

7.1 Creation and Usage Regulations

There is no distinction under DABA between asset classes for the purposes of the regulatory regimes; all would be captured under the DABA licensing regime or the IBA (to the extent applicable).

7.2 Exchange-like Platform Participants

Such participants are considered exchange-like platforms subject to the applicable regulatory regimes.

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

There is no requirement to register as a market-maker, although if a person qualifies as a 'market maker' for the purposes of DABA (namely, a person conducting the business of trading in digital assets, including but not limited to, quoting buy and sell prices in furtherance of profit or gain on the bid offer spread), such activity is specifically caught by DABA under the definition of 'digital asset service vendors', and a licence is required to conduct such activities in or from within Bermuda.

7.4 Issues Relating to the Best Execution of Trades

This is not applicable in Bermuda.

7.5 Rules of Payment for Order Flow

This is not applicable in Bermuda.

8. Financial Research Platforms

8.1 Registration

There is no requirement for registration in Bermuda.

8.2 Regulation of Unverified Information

This is not applicable in Bermuda.

8.3 Conversation Curation

This is not applicable in Bermuda.

9. InsurTech

9.1 Underwriting Processes

There are no required underwriting processes that are applicable to the InsurTech sector specifically in Bermuda. In practice, it is anticipated that such processes will be dictated by the requirements of the existing insurance companies that are most likely to utilise the products, services and delivery channels offered by this sector. Bermuda (re)insurers are currently exercising caution and are largely engaged in purchasing or investing in InsurTech products and apps for implementation into their existing underwriting platforms.

9.2 Treatment of Different Types of Insurance

The Insurance Act 1978 governs the various (re)insurance sectors. Long-term insurance is treated somewhat differently by industry participants and the BMA, insofar as it is subject to specific regulations, including (among other things) relating to the maintenance and segregation of assets for the protection of policyholders.

Ultimately, it is the obligation of CEOs and Chief Underwriting Officers to decide the blend of business that they will underwrite.

10. RegTech

10.1 Regulation of RegTech Providers

To the extent that a RegTech business is conducting a digital assets business activity in and from within Bermuda, it will require a licence under DABA.

10.2 Contractual Terms to Assure Performance and Accuracy

There are currently no specific regulations placed on the RegTech sector, and contractual terms would be subject to negotiation and market practice. This sector is still emerging in Bermuda, so market practice may be more likely to be based on international industry norms rather than Bermuda-specific terms.

10.3 RegTech Providers as 'Gatekeepers'

If licensed under DABA, a RegTech provider would be a 'regulated financial institution' for the purposes of AML/ATF Requirements and would be required to report suspicious activities under those requirements.

11. Blockchain

11.1 Use of Blockchain in the Financial Services Industry

Due to Bermuda's current FinTech environment, a number of legacy players are actively considering the use of blockchain, including in the insurance, banking, operational and governmental sectors. The Bermuda Government has announced that the Bermuda system for registering land title, for example, will be placed on the blockchain. Furthermore, the Government is seeking to implement an island-wide electronic ID system utilising blockchain technology.

11.2 Local Regulators' Approach to Blockchain

Please see 2. **FinTech Verticals**, above.

11.3 Classification of Blockchain Assets

Please see 2. **FinTech Verticals**, above.

11.4 Regulation of ‘Issuers’ of Blockchain Assets

Please see **2. FinTech Verticals**, above, concerning the Token Offering Legislation and Token Offering Regulations.

11.5 Regulation of Blockchain Asset-trading Platforms

To the extent that such trading platforms are being operated by an entity as a digital assets business within the scope of DABA, they will require a licence from the BMA. DABA-licensed businesses that wish to utilise third-party software and trading platforms for the purpose of conducting initial digital assets offerings or for the secondary trading of digital assets are permitted to do so, but the DABA-licensed entity will need to comply with rules relating to outsourcing arrangements. Peer-to-Peer trading is not regulated unless it is undertaken on a platform operated by a digital assets business in or from within Bermuda.

11.6 Regulation of Invested Funds

Open-ended funds that fall within the definition of ‘investment funds’ are regulated under the Investment Funds Act 2006 and it does not matter if the underlying investments are digital assets or other types of assets for the purpose of that Act. If the fund wishes to conduct an initial offering of digital assets to enable subscribers to subscribe other than in fiat, it will be able to do so, subject to compliance (if applicable) with the Token Offering Legislation. To the extent that the offer is not being made to the public (such as in a private character offering), such offer will be exempt from the requirements under the Token Offering Legislation.

11.7 Virtual Currencies

Virtual currencies are caught within the definition of ‘digital assets’ for the purpose of the Token Offering Legislation and DABA, and regulated accordingly.

11.8 Impact of Privacy Regulation on Blockchain

Any regulation has the potential to impact blockchain which, by its premise, infers a decentralised ledger that does not depend on or require oversight by the initial promoter or issuer or any regulator. However, the shift in approach to ownership and protection of personal data promulgated under privacy laws such as GDPR may be supported by blockchain, as the transparency and immutability of data help to prevent fraud and have the potential to enable the use and trading of data as an asset, subject to the permission of the owner.

12. Open Banking

12.1 Regulation of Open Banking

There is no restriction under Bermuda law on open banking specifically. As outlined above, the licensing requirements of the Banks Act would be applicable if such activities are being conducted in or from Bermuda.

12.2 Concerns Raised by Open Banking

There are no open banking technology providers currently operating in Bermuda.

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