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# Fintech

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## Law and Practice

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## **1. Fintech Market**

### **1.1 Evolution of the Fintech Market**

Emergent fintech firms continue to be established and grow in Guernsey, taking advantage of the island's internationally recognised, flexible and forward-thinking regulatory environment in blockchain administration, lending, robo-advisory, data analytics, payment services, client due diligence and prime-brokerage platforms.

In particular, blockchain platforms operating in Guernsey benefit from the Electronic Transactions (Guernsey) Law, 2000 (Electronic Transactions Law) which confirms that, subject to limited exceptions, a contract cannot be denied legal effect, validity or enforceability solely because the contract was made in an electronic form or by electronic means. The Electronic Transactions Law is technology agnostic and can be applied to all forms of digital technology.

On 1 March 2019, the Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019 (Electronic Agents Ordinance) came into force, enabling the use of electronic agents. The Electronic Agents Ordinance is the culmination of the work of legal and other experts in the industry in collaboration with policymakers in the States of Guernsey, the Guernsey Financial Services Commission (the GFSC) and Guernsey Finance to create an environment in which electronic agents can easily be used. Guernsey is possibly the first jurisdiction in the world to introduce legislation that fully enables the use of electronic agents.

#### **Uses and Relevance of Electronic Agents**

In general terms, electronic agents consist of computer software and devices that can independently perform certain tasks without review by a person, which makes the software or device autonomous. Existing examples include driverless cars and virtual assistants found in smartphones. Autonomous software and devices are not a new concept, and perhaps the most common example is vending machines for snacks and drinks. However, those types of devices can only work in accordance with how they were designed and programmed by a person. Advances in technology and, in particular, in artificial intelligence (AI), can change this by giving the software or device the ability to make its own decisions. For example, a vending machine could be enabled to decide to accept a lower offer for a snack if it thought that it needed to be sold sooner to avoid a use-by date.

Modern technologies enable increasingly complicated tasks to be automated by software and devices (also known as bots). However, existing laws around the globe envisage people, not computers, having discretion as to whether to perform certain

actions that can give rise to legal rights and liabilities, such as deciding whether or not to enter into a contract.

In Guernsey, electronic agents can now be used to form (such as by negotiating), enter into, perform and also to end contracts on behalf of a person, which could be an individual, a company or any other corporate or unincorporated entity. An electronic agent can represent just one of the parties to a contract or multiple parties, or different electronic agents could represent different parties, which makes the legislation very flexible. It is also not a requirement for anyone wishing to use such electronic agents to be in Guernsey, although in order to benefit fully from the new legislation it is likely that a person who uses such an electronic agent would need to operate it in Guernsey. The new legislation also contains a rebuttable presumption that a person who uses an electronic agent intends to create a legally binding contract using the electronic agent.

Electronic agents should be particularly relevant to businesses that are seeking to use blockchain, machine learning and AI technologies to automate contracts, which is really useful for businesses that use smart contracts.

#### **New Handbook**

The GFSC has also introduced a new Handbook on Countering Financial Crime and Terrorist Financing (New Handbook), which applies to businesses in Guernsey that are required to satisfy the island's anti-money laundering requirements. The New Handbook introduces a novel regime to satisfy client due diligence requirements using digital certifiers, which can include the use of blockchain and other recent advances in technology. This will enable businesses to use advanced technologies to satisfy their anti-money laundering obligations, which is expected to be popular with emergent fintech businesses.

## **2. Fintech Business Models and Regulation in General**

### **2.1 Predominant Business Models**

Guernsey is home to an increasing number of financial research and analytics, money services and client due diligence platforms.

#### **Financial Research and Analytics Platforms**

Financial research and analytics platforms typically provide services to the island's investment management and private wealth sectors, as well as to businesses around the world. The types of services offered generally include financial research, data analytics, risk and reporting systems.

Existing financial research platforms are more likely to provide services, such as investment advice or management, which require a licence to be granted by the GFSC. However, newer financial research platforms usually limit the services that they offer, so that they do not require a licence.

## **Money Services and Client Due Diligence Platforms**

Money services platforms provide lending, payment and FX solutions for clients as alternative financial services providers in Guernsey, and they are usually registered with the GFSC and must comply with Guernsey's anti-money laundering and counter-terrorist financing regime.

Client due diligence platforms have been launched and continue to be developed in Guernsey, which take advantage of Guernsey's updated know-your-customer regime, which enables the use of digital certifiers. Client due diligence platforms typically provide services to regulated financial services firms in Guernsey and internationally.

Guernsey is also home to an increasing number of prime brokerage platforms, which provide services to professional and institutional investors for high-frequency and algorithmic trading.

## **2.2 Regulatory Regime**

Financial research platforms that provide investment advice and management services must be licensed by the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (PoI Law). Other platforms that provide payment services and lending solutions are typically registered with the GFSC under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, which is a lighter touch regime that requires compliance with Guernsey's anti-money laundering and counter-terrorist financing regime.

Other types of fintech platforms, including those that provide financial research solutions and do not provide investment advice, management services or money solutions, generally do not need to be licensed by the GFSC.

## **2.3 Compensation Models**

There are no prescribed models for charging customers in Guernsey. However, industry participants are typically required to disclose to their customers in writing all fees and charges, together with the basis of their calculation, before entering into an agreement with customers to provide services. Industry participants may also be required to disclose any remuneration to be received in connection with a transaction prior to the execution of the transaction. If the amount of the remuneration is not known, the basis of its calculation should be disclosed.

## **2.4 Variations Between the Regulation of Fintech and Legacy Players**

The same regulation applies to fintech industry participants that applies to legacy financial services businesses in Guernsey.

## **2.5 Regulatory Sandbox**

The GFSC has introduced the Innovation Soundbox, to serve as a central hub for enquiries relating to innovative financial services.

The Innovation Soundbox is targeted at start-up financial services businesses who are considering applying for a regulatory licence or registration from the GFSC.

The Innovation Soundbox can be contacted via the GFSC's website ([www.gfsc.gg](http://www.gfsc.gg)) to provide initial guidance regarding Guernsey's regulatory framework and how it may apply to a new business.

The GFSC is also a founding member of the Global Financial Innovation Network (GFIN), together with the UK Financial Conduct Authority (FCA). A key purpose of GFIN is to create a "global sandbox" to provide firms with an environment in which to trial cross-border solutions. GFIN also acts as a network of regulators to collaborate and share experiences of innovation in emerging technologies and business models, and to provide a forum for joint policy work and discussions. Further information about GFIN can be found on the GFSC's website.

## **2.6 Jurisdiction of Regulators**

The GFSC's jurisdiction generally applies to financial services businesses that conduct, or claim to conduct, business in Guernsey. This can include occupying premises or advertising a contact address in Guernsey, as well as issuing adverts or making offers in Guernsey, or that specifically target clients in Guernsey.

## **2.7 Outsourcing of Regulated Functions**

Depending on the type of licence that has been granted by the GFSC, as well as whether any derogations have been granted, particular requirements may apply to the outsourcing arrangement, including in respect of the terms of the outsourcing contracts. Certain activities, such as corporate administration, can only be outsourced to a firm in Guernsey that is licensed by the GFSC.

## **2.8 Significant Enforcement Actions**

So far, no known public enforcement action has been taken against fintech firms in Guernsey.

## **2.9 Implications of Additional Regulation**

The Data Protection (Bailiwick of Guernsey) Law, 2017 (DP Law) has introduced new rules into Guernsey, which are based

on the EU's General Data Protection Regulation (EU) 2016/679 (GDPR). The new data protection rules apply to all businesses in Guernsey. Guernsey also benefits from being one of only 13 countries that have been granted a data protection adequacy decision by the EU Commission, which enables the free flow of personal data between EU member states and Guernsey. Guernsey's adoption of the GDPR makes it much easier for Guernsey businesses to access EU markets, and also provides comfort to customers and clients of those businesses that there are safeguards in place to protect their personal data.

## **2.10 Regulation of Social Media and Similar Tools**

Guernsey does not have specific regulations for social media. However, the GFSC has issued an update explaining that businesses operating in Guernsey may wish to look to the FCA's guidance on social media and customer communications.

## **2.11 Review of Industry Participants by Parties Other Than Regulators**

Financial services firms that are licensed by, or registered with, the GFSC must appoint an auditor, which must audit the business in accordance with recognised accounting standards. However, there are no other additional requirements that apply to financial services firms, except those that are applied by the GFSC.

## **2.12 Conjunction of Unregulated and Regulated Products and Services**

Industry participants that are licensed or registered with the GFSC can also offer unregulated products and services. However, if those products and services are offered via the same licensed or registered entity, the products and services will generally have to comply with the regulatory requirements imposed on the industry participant in respect of its regulated activities. On this basis, it is not unusual for a financial services business to establish a separate firm to offer unregulated products and services, when it may not be necessary or desirable for any regulatory requirements to be applied to them.

## **3. Robo-Advisers**

### **3.1 Requirement for Different Business Models**

Robo-advisers are not required to have a different business model to other types of investment advisers in Guernsey.

### **3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers**

Legacy players in Guernsey have developed their own technologies to provide robo-advisory services, which are being offered in conjunction with their existing products and services. Industry participants that seek to provide robo-advisory services need

to be licensed by the GFSC, and their business plans, business risk assessments and operations manuals expressly need to cover the application of the robo-advisory services, which also need to be reviewed and approved by the GFSC.

### **3.3 Issues Relating to Best Execution of Customer Trades**

Investment businesses that are licensed under the PoI Law in Guernsey must comply with the Licensees (Conduct of Business) Rules, 2016 (CoB Rules). The CoB Rules require licensees that deal with, or for, a client to provide best execution, unless there is a specific instruction from the client. Licensees must also have a best execution policy in place, which must be disclosed to clients. The policy should state the execution venues used by the licensee.

In order to provide best execution, the licensee must take reasonable care to ascertain the best available price for the client in the relevant market at the time for transactions of the kind and type concerned.

If a licensee is using a robo-advisory platform to deal with, or for, a client, the licensee is still ultimately responsible for achieving best execution for the client. Therefore, it is important that the robo-advisory platform can satisfy the best execution requirement. A suitable sample of orders should be reviewed regularly by the licensee as part of the licensee's ongoing compliance monitoring programme, to ensure the orders are executed in accordance with the licensee's best execution policy.

## **4. Online Lenders**

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

There are no differences in the regulation of loans to individuals, small businesses or others that are provided by fintech firms, in comparison to legacy loan providers.

### **4.2 Underwriting Processes**

While Guernsey currently does not have specific consumer lending or credit regulations, conduct of business rules and codes of conduct in Guernsey require suitability assessments in certain circumstances.

### **4.3 Sources of Funds for Loans**

Alternative lenders whose source of funds is peer-to-peer or lender-raised capital typically fall within the scope of the Registration of Non-Regulated Financial Services Businesses (Bailliwick of Guernsey) Law, 2000 (NRFSB Law). The NRFSB Law requires financial services businesses to comply with Guernsey's anti-money laundering regime. It is also possible for the GFSC

to impose additional requirements on financial services businesses that are registered under the NRFSB Law, such as professional indemnity insurance.

Alternative lenders whose source of funds is taking deposits are generally classified as banks in Guernsey, and must be licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (Banking Law). The Banking Law imposes much higher regulatory requirements on businesses than the NRFSB Law.

#### **4.4 Syndication of Loans**

Syndicated loans are regularly made to Guernsey borrowers. However, these loans are typically arranged and funded by non-Guernsey commercial and investment banks, and they are usually subject to English law-governed finance documents. There are also alternative finance providers in Guernsey that offer finance on a syndicated basis.

## **5. Payment Processors**

### **5.1 Payment Processors' Use of Payment Rails**

While it is possible in Guernsey for payment processors to create and use new payment rails, payment service providers carrying out single euro payments area (SEPA) credit transfer transactions and SEPA direct debit transactions, must satisfy the technical requirements set out in Titles III and IV of the Payment Services Directive (EU) (2015/2366) and the Single Euro Payment Area (SEPA) Migration Regulation (260/2012), which have been adopted into Guernsey law.

### **5.2 Regulation of Cross-border Payments and Remittances**

Guernsey participates in the SEPA and has implemented the requirements of the Payment Services Directive (EU) (2015/2366) and the Single Euro Payment Area (SEPA) Migration Regulation (260/2012) into local law. Guernsey has also adopted the Wire Transfer Regulation (EU) (2015/847).

## **6. Fund Administrators**

### **6.1 Regulation of Fund Administrators**

Fund administrators that conduct, or claim to conduct, any controlled investment business in Guernsey, which includes the administration of collective investment schemes or funds, must be licensed by the GFSC under the PoI Law.

### **6.2 Contractual Terms**

Contractual terms between fund advisers and fund administrators are usually based on the fund administrators' standard terms of appointment for fund advisers. While there is an ele-

ment of industry custom in respect of fund administrators' agreements, they do vary between fund administrators to reflect the particular requirements of each fund administrator and their relationship with their client fund advisers.

### **6.3 Fund Administrators as "Gatekeepers"**

Fund administrators have a positive duty to prevent suspicious or unlawful behaviour and to report it to the Guernsey Financial Investigation Unit (Guernsey FIU) and to the GFSC. It is also important that fund administrators do not inform those persons they believe may have committed any suspicious or unlawful behaviour that they have reported them to the Guernsey FIU and the GFSC, otherwise the fund administrator may risk committing a tipping-off offence.

## **7. Marketplaces, Exchanges and Trading Platforms**

### **7.1 Permissible Trading Platforms**

Guernsey's financial services regulatory regimes do not prescribe or limit the different types of trading platforms that are permissible in Guernsey. Instead, the GFSC will review each type of trading platform as part of an application for licensing or registration of the operator of the platform in Guernsey, in order to be satisfied that the platform meets Guernsey's regulatory requirements.

### **7.2 Regulation of Different Asset Classes**

Collective investment schemes and general securities and derivatives typically fall within the scope of the PoI Law. In particular, a token or coin issued using blockchain technology that has the characteristics of a security or derivative, or a fund that issues interests to investors using tokens or coins, will likely fall within the scope of the PoI Law. Financial services businesses that conduct, or claim to conduct, restricted activities in or from within Guernsey in respect of collective investment schemes or general securities and derivatives must be licensed by the GFSC. Restricted activities include promotion, subscription, registration, dealing, management, administration, advising and custody.

Other forms of digital asset classes, such as cryptocurrencies that are not asset backed, may fall within the scope of the NRFSB Law, since financial services businesses that provide services in respect of cryptocurrencies could be classed as:

- operating a money service business;
- facilitating or transmitting value through an informal value transfer system or network;
- issuing, redeeming, managing or administering means of payments;

- money broking;
- money changing;
- providing safe custody services; or
- accepting funds other than deposits.

Financial services businesses that are registered under the NRFSB Law generally benefit from a lighter-touch regulatory regime in comparison to businesses that are licensed under the PoI Law.

### **7.3 Impact of the Emergence of Cryptocurrency Exchanges**

Guernsey has not introduced specific regulation to govern cryptocurrency exchanges. However, the GFSC is currently reviewing the NRFSB Law and may update it in the future to include provisions that add additional regulatory protections for customers of cryptocurrency exchanges that are not licensed under the PoI Law.

### **7.4 Listing Standards**

No formal listing standards exist for unregulated platforms, but general contractual principles should apply. Exchanges that are regulated by the GFSC will have detailed listing/admission to trading rules to ensure transparency and compliance with applicable laws and regulations (eg, the International Stock Exchange Listing Rules), while rules relating to the requirement to publish a prospectus may also be relevant.

### **7.5 Order Handling Rules**

Financial services businesses that are licensed under the PoI Law must comply with the requirements of the CoB Rules, which include rules governing the execution of orders. In particular, the CoB Rules require licensees to complete client and own account orders fairly and in due turn. The execution of client orders must also be effected or arranged as soon as reasonably practicable in the circumstances, unless the licensee has reasonable grounds to believe that postponing the execution of the order would be in the best interests of the client. Furthermore, a licensee must not unfairly prejudice itself or any of those for whom it has dealt where the licensee has aggregated an order for a client transaction with an order for an own account transaction, or with another order for a client transaction. If all of the orders cannot be achieved, the orders for the client transactions must be satisfied first, unless the licensee has reasonable grounds to believe that, without its own participation, it would not have been able to effect those orders either on favourable terms, or at all.

### **7.6 Rise of Peer-to-Peer Trading Platforms**

Peer-to-peer trading platforms typically fall within the scope of the NRFSB Law and must satisfy Guernsey's anti-money laundering and counter-terrorist financing requirements.

### **7.7 Issues Relating to Best Execution of Customer Trades**

Investment businesses that are licensed under the PoI Law in Guernsey must comply with the CoB Rules. The CoB Rules require licensees that deal with, or for, a client to provide best execution, unless there is a specific instruction from the client. Licensees must also have in place a best execution policy, which is disclosed to clients. The policy should state the execution venues used by the licensee.

In order to provide best execution, the licensee must take reasonable care to ascertain the best available price for the client, in the relevant market at the time, for transactions of the kind and type concerned.

### **7.8 Rules of Payment for Order Flow**

While payments for order flow are generally permitted in Guernsey, firms must disclose to their customers all remuneration that they will receive in connection with a transaction prior to the execution of the transaction. If the amounts are not known, the basis of the calculation of the remuneration must be disclosed.

## **8. High-Frequency and Algorithmic Trading**

### **8.1 Creation and Usage Regulations**

High-frequency and algorithmic trading platforms that provide services for, or on behalf of, clients in return for fees generally fall within the scope of the PoI Law and must be licensed by the GFSC. However, Guernsey does not have a specific regulatory regime for high-frequency and algorithmic trading platforms.

### **8.2 Exchange-like Platform Participants**

Participants that provide facilities for the trading of securities, or for the listing of securities for the purpose of trading, by their members are likely to be required to be licensed by the GFSC under the PoI Law as investment exchanges.

### **8.3 Requirement to Register as Market Makers When Functioning in a Principal Capacity**

There are no specific rules in Guernsey that apply to market makers when they are functioning in a principal capacity.

### **8.4 Issues Relating to the Best Execution of Trades**

Investment businesses that are licensed under the PoI Law in Guernsey must comply with the CoB Rules. The CoB Rules require licensees that deal with, or for, a client to provide best execution, unless there is a specific instruction from the client. Licensees must also have in place a best execution policy, which

is disclosed to clients. The policy should state the execution venues used by the licensee.

In order to provide best execution, the licensee must take reasonable care to ascertain the best available price for the client in the relevant market at the time, for transactions of the kind and type concerned.

## **8.5 Regulatory Distinction Between Funds and Dealers**

Collective investment schemes (funds) are subject to specific rules, depending on the type of fund (ie, open or closed-end, authorised or registered, qualifying investor fund or private investment fund), which address the particular requirements for a fund. Dealers themselves are not subject to the specific rules for funds.

## **8.6 Rules of Payment for Order Flow**

The requirements of the CoB Rules apply to all firms licensed under the PoI Law that engage in algorithmic trading.

# **9. Financial Research Platforms**

## **9.1 Registration**

Financial research platforms that provide, or claim to provide, investment advice or management services in or from within Guernsey on behalf of clients must be licensed by the GFSC under the PoI Law.

Other financial research platforms that do not provide investment advice or management services typically do not need to be licensed by the GFSC.

## **9.2 Regulation of Unverified Information**

The EU Market Abuse Regulation (596/2014) (MAR) does not apply in Guernsey. However, the PoI Law includes a prohibition against market abuse.

Market abuse under the PoI Law generally consists of behaviour by a person or persons, in relation to collective investment schemes or general securities and derivatives traded on a regulated exchange (Qualified Investments), which is likely to be regarded by a regular user of that market as a failure on the part of that person or persons to observe the standard of behaviour reasonably expected of a person in their position in relation to the market. Regulated exchanges are expressly prescribed and include the LSE, AIM, NYSE, NASDAQ, The International Stock Exchange, any regulated market that falls within the meaning of the European Directive of Markets in Financial Instruments 2004/39/EU (MiFID), as well as others.

The GFSC has issued The Code of Market Conduct, which includes descriptions of behaviour that amount to market abuse. In particular, The Code of Market Conduct describes the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a Qualified Investment by a person who knew, or could reasonably be expected to have known, that the information was false or misleading. Therefore, it is likely that the spreading of false or misleading rumours and other unverified information that turns out to be false or misleading in respect of Qualified Investments, may amount to market abuse under the PoI Law.

## **9.3 Conversation Curation**

It is the responsibility of the operator of the platform to have in place measures that prevent and avoid pump-and-dump schemes, spreading of inside information, or other types of unacceptable behaviour.

## **9.4 Platform Providers as “Gatekeepers”**

Platform providers have a positive duty to prevent suspicious or unlawful behaviour and to report it to the Guernsey FIU and the GFSC. It is also important that platform providers do not inform those persons they believe may have committed any suspicious or unlawful behaviour that they have reported them to the Guernsey FIU and the GFSC, otherwise the platform provider may risk committing a tipping-off offence.

# **10. Insurtech**

## **10.1 Underwriting Processes**

Guernsey is a world leader in captive insurance and insurance-linked securities, and the island’s insurance sector is regulated by the GFSC.

Insurtech businesses that conduct, or claim to conduct, insurance business in or from within Guernsey, by accepting risks in effecting or carrying out contracts of insurance, fall within the scope of the Insurance Business (Bailiwick of Guernsey) Law, 2002 (Insurance Business Law) and must be licensed by the GFSC.

Insurtech businesses that occupy premises in Guernsey, or are contactable from an address in Guernsey, or offer to perform their services in Guernsey, and which enter into, or offer to enter into, a contract to exercise the managerial functions of an insurer, to advise clients on their insurance requirements, or to arrange contracts of insurance between insurers and clients, fall within the scope of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (Insurance Managers Law). Insurtech businesses that fall within the scope

of the Insurance Managers Law must also be licensed by the GFSC.

The GFSC has issued regulations and rules under the Insurance Business Law and the Insurance Managers Law that impose requirements on the operations of insurtech businesses that fall within the scope of those laws. In particular, the GFSC has introduced rules that impose requirements on the conduct of business of, and the solvency requirements for, insurers and insurance managers and intermediaries.

## 10.2 Treatment of Different Types of Insurance

The Insurance Business Law and the Insurance Managers Law treat long-term and general insurance business as different categories of insurance. Long-term insurance includes life, marriage and birth, permanent health, capital redemption, credit life assurance, as well as pension fund management.

The GFSC applies different rules and requirements in respect of insurance businesses that provide general or long-term insurance products or services.

## 11. Regtech

### 11.1 Regulation of Regtech Providers

Regtech businesses in Guernsey are not currently regulated, unless those businesses provide other financial services, such as company administration.

The GFSC recently conducted an industry consultation, which asked whether businesses that provide compliance services, such as client due diligence services, should be regulated by the GFSC. The benefits of regulating client due diligence services providers would be to ensure high industry standards and also to enable client due diligence services providers to act as introducers for regulated financial services businesses.

The GFSC's changes to the New Handbook will enable financial services businesses in Guernsey to adopt apps that can automatically certify identity and address verification documentation without requiring approved certifiers. This development should create a huge opportunity for regtech providers that offer services in Guernsey.

Other forms of regtech providers, such as businesses that provide reporting tools (eg, for KID reports under PRIIPs or for FATCA and CRS reporting) or compliance management platforms, are typically unregulated in Guernsey.

### 11.2 Contractual Terms to Assure Performance and Accuracy

The contractual terms between financial services firms and technology providers vary considerably depending on the type of relationship between the financial services firm and the technology provider, as well as the type of service being offered. However, the contractual terms would typically include provisions that cover service levels, intellectual property, confidentiality, data protection, termination, insurance and suitable warranties and indemnities.

### 11.3 Regtech Providers as "Gatekeepers"

Regtech providers have a positive duty to prevent suspicious or unlawful behaviour and to report it to the Guernsey FIU. If the regtech provider is regulated by the GFSC it should also report the suspicious or unlawful behaviour to the GFSC. Furthermore, it is important that regtech providers do not inform those persons they believe may have committed suspicious or unlawful behaviour that they have reported them to the Guernsey FIU, otherwise the regtech provider may risk committing a tipping-off offence.

## 12. Blockchain

### 12.1 Use of Blockchain in the Financial Services Industry

Fund administration and management firms have already started to implement blockchain technology for the purposes of performing fund administration functions in Guernsey. In addition, participants in the financial services industry in Guernsey have been considering using blockchain technology to hold and share client due diligence information securely.

Some banks and custodians are also considering establishing services either to issue, or to act as custodian of, cryptocurrencies.

### 12.2 Local Regulators' Approach to Blockchain

In Guernsey, blockchain is generally recognised as a software tool that can be used to record and distribute information securely. Therefore, while some of the activities that blockchain can be used for, such as token offerings, would typically be regulated, blockchain technology itself is not regulated.

However, financial services firms that are regulated in Guernsey and that wish to use blockchain technology should liaise with the GFSC to update it on how the technology will fit within the firm's business models and operating procedures, whether the technology will present any risks, and to demonstrate to the GFSC that they have sufficient knowledge and experience to use the technology.

## 12.3 Classification of Blockchain Assets

Whether an asset that is recorded on a blockchain is regulated in Guernsey will depend on the nature of the underlying asset.

In respect of security tokens (including equity tokens) that are linked to an asset, where the value of the tokens is derived from that asset (such as shares, futures or options contracts), or where the issuer of the tokens has the characteristics of a collective investment scheme, namely:

- investors share in the profits and income arising from the investments of the issuer;
- investors do not have day-to-day control over the investments of the issuer; and
- the contributions of investors and the profits and income from which payments are to be made are pooled, or the investments of the issuer are managed by a third-party investment manager,

the tokens will likely fall within the scope of the PoI Law.

Utility tokens (app coins or user tokens) that are linked to the purchase of goods or services will likely be classed as a form of informal value transfer system or network, or a form of issuing, redeeming, managing or administering means of payments, which will likely fall within the scope of the NRFSB Law.

## 12.4 Regulation of “Issuers” of Blockchain Assets

Financial services providers in Guernsey that provide services to issuers of security tokens that fall within the scope of the PoI Law will likely have to be licensed by the GFSC, and comply with the requirements of the PoI Law and the applicable rules made under the PoI Law.

Financial services providers in Guernsey that provide services to issuers of utility tokens that fall within the scope of the NRFSB Law will likely have to comply with the requirements of the NRFSB Law and Guernsey’s anti-money laundering and counter-terrorist financing regime. The NRFSB Law requires financial services businesses to be registered with the GFSC.

Depending on the nature of the assets to be issued, the issuer may also need to be regulated in Guernsey and/or comply with additional rules, including in respect of disclosures to investors. If the services provided include company administration, it is likely that the services provider will also need to be licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, which has a higher regulatory burden than the NRFSB Law.

## 12.5 Regulation of Blockchain Asset Trading Platforms

Blockchain asset trading platforms in Guernsey will generally fall within the scope of the PoI Law or the NRFSB Law, depending on the nature of the underlying assets that are traded, which require the operator of the platform either to be licensed or registered by the GFSC.

The GFSC has issued guidance that it would be cautious about approving applications for token or coin offerings which could then be traded on a secondary market, due to the increased risk of fraud and money laundering.

## 12.6 Regulation of Invested Funds

Any funds that invest in blockchain assets are regulated in the same way as any other funds that invest in other types of alternative asset classes. However, it is likely that the GFSC will take a cautious approach to approving funds that invest in blockchain assets due to the potential volatility risk and the risk of fraud and money laundering.

## 12.7 Virtual Currencies

The legal treatment of any cryptocurrency or other blockchain asset will be determined by whether that particular asset’s features fall within the scope of existing legislative and regulatory regimes.

## 12.8 Impact of Privacy Regulation on Blockchain

Blockchain is a form of software and any operators or users of the software, who use it to access or store personal data, are likely to be subject to data protection requirements in accordance with the DP Law. The DP Law has transposed equivalent provisions of the GDPR into Guernsey law. Guernsey also benefits from the data protection adequacy decision of the EU Commission to enable the easy transfer of personal data between businesses in EU member states and Guernsey.

# 13. Open Banking

## 13.1 Regulation of Open Banking

Guernsey has adopted Titles III and IV of PSD2 into Guernsey law. A possible disruptive aspect of PSD2 is the ability for payment initiation service providers to initiate payments from account-servicing payments service providers and for account information service providers to access customer data.

Retail banking in Guernsey is dominated by the same UK clearing banks that are implementing open banking in the UK. On this basis, financial institutions in Guernsey may seek to introduce open banking as a consequence of its adoption in the UK.

## **13.2 Concerns Raised by Open Banking**

PSD2 imposes certain conditions on the access to, and use of, data by firms providing a payment initiation service or account information service. This includes a requirement for customer consent and other requirements in relation to security and the use of data. In addition, the DP Law requires customers to be made fully aware, in a clear, concise and transparent fashion, of how their personal data will be used and by whom. It also provides for the right to withdraw consent and access to data, and the right for information to be erased. In sharing data with third parties such as account information service providers, financial institutions need to be aware of the potential for fraud or other risks.

# GUERNSEY LAW AND PRACTICE

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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. Its clients are Fortune 100 and FTSE 100 companies as well as some of 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 de-

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