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Fintech

Jersey

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Law and Practice

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1. Fintech Market

1.1 Evolution of the Fintech Market

Jersey has been a leading international finance centre for more than 50 years. Thanks to a forward-thinking approach, Jersey is at the forefront of wealth management, funds, capital markets and banking, plus the specialist areas of fintech, philanthropy and socially responsible investing.

Recently, Jersey has been at the forefront of innovation and disruption in the fintech sector, with the following initiatives:

- Electronic Communications (Jersey) Law 2000 – blockchain platforms operating in Jersey benefit from the Electronic Transactions (Jersey) 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.
- Initial Coin Offering (ICO) Guidance Note – in July 2018, the Jersey Financial Services Commission (JFSC) issued guidance for the path to regulatory approval for ICOs in Jersey. The guidance note represents an innovative and balanced approach to the treatment of ICOs, enabling them to be launched in Jersey with a number of controls in place to help reduce some of the risks associated with them. Under this framework, the JFSC does not regulate the ICOs or the companies that issue them, however, it does require the companies to satisfy certain minimum standards and to appoint a regulated Trust and Company Service Provider to administer the company.
- Binance Jersey – since it came into effect in January 2019, Binance has launched a new platform for fiat-crypto trading of euros (EUR) and British pounds (GBP) to cryptocurrency (bitcoin and ethereum), giving investors in Europe and beyond easy access to the rapidly evolving cryptocurrency market, and an alternative to standard currency (fiat) exchange.
- Global Financial Innovation Network (GFIN) – formally launched in January 2019 by an international group of financial regulators and related organisations (including the JFSC), the GFIN seeks to provide a more efficient way for innovative firms to interact with regulators, and aims to create a new framework for co-operation between financial services regulators on innovation-related topics, sharing different experiences and approaches.

The industry and regulators are also expected to continue to balance the opportunities and challenges of cryptocurrencies and fintech, including in relation to anti-money laundering, investor

protections, and maintaining Jersey's reputation as a first-class international finance centre.

2. Fintech Business Models and Regulation in General

2.1 Predominant Business Models

With respect to blockchain, Jersey vehicles' involvement is typically as crypto-funds, such as the world's first regulated bitcoin investment fund, GABI (formerly the Global Advisors Bitcoin Investment fund), funds investing in blockchain projects, and token issuers in the context of ICOs (such as Jersey's first ICO, the AAA Reserve Currency (formerly the ARC Reserve Currency), and joint-venture vehicles developing blockchain projects.

2.2 Regulatory Regime

The JFSC is responsible for the regulation, supervision and development of the financial services industry on the Island of Jersey, including banking, collective investment funds, fund services businesses, and trust and company service providers.

In summary, the regulatory laws provide for a licensing process whereby entities and individuals conducting regulated activity are required to obtain a licence or be registered with the JFSC in order to conduct regulated activities.

In addition to the regulatory laws generally applicable for regulated activities, Jersey also has specific regulation and/or guidance applicable to the fintech sector.

Where a person who, by way of business, meets the definition of carrying on a "virtual currency exchange" (VCE) business, defined in paragraph 9 of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 (POCL), that person is required by the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (2008 Law) to make an application to the JFSC for level 1 registration.

A company engaged in the business of being a VCE would be subject to the JFSC's Sound Business Practice Policy (SBPP) (under Table 2, Activity 8: "Involvement, directly or indirectly, in initial coin offerings or crypto exchanges or providing other services relating to cryptocurrencies"). The SBPP sets principles regarding the activities that the JFSC considers sensitive and is required to provide additional information and detail to the JFSC.

While not regulating initial coin offerings, the JFSC's ICO Guidance Note places certain conditions on ICO issuing companies, including their compliance with relevant anti-money laundering and countering the financing of terrorism (AML/CFT)

requirements and a requirement for ICO issuing companies to have their annual accounts audited and filed with the Registrar of Companies in Jersey (irrespective of their status as either a public or a private company).

Furthermore, in 2018 the JFSC amended its SBPP to reflect that ICOs (while not regulated by the JFSC) constitute a “sensitive activity”. Accordingly, ICO issuing companies are required to maintain and adopt systems, controls, policies and procedures for customer take-on and redemption, profiling and transaction monitoring at enhanced levels, ensuring internal and external reporting of suspicions of money-laundering and financing-terrorism activity.

2.3 Compensation Models

There are no prescribed models for charging customers in Jersey. 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 JFSC does not differentiate between fintech participants and legacy participants. The applicability of the JFSC’s licensing structure centres on the activities conducted by the participant. A fintech participant falls within the JFSC’s regulatory scope if it conducts a licensed activity.

2.5 Regulatory Sandbox

An exemption to the level 1 registration requirement is available if a person meets the conditions set out in Article 2(1) of the Proceeds of Crime (Supervisory Bodies) (Virtual Currency Exchange Business) (Exemption) (Jersey) Order 2016 (Exemptions Order). In brief, this requires that a VCE’s turnover should be less than GBP150,000 in the calendar year immediately preceding the notification of its exemption to the JFSC.

Once the conditions of the Exemptions Order are met, such a person is:

- not required to make a level 1 registration application;
- not required to pay any fees to the JFSC; but
- is still considered to be a registered person for some parts of the 2008 Law, most notably Part 5.

Part 5 of the 2008 Law addresses the supervision of schedule 2 business and provides the JFSC with its supervisory powers,

such as the power to issue a code of practice, make public statements and issue directions to a person requiring anything to be done, or not done.

The conditions set out in Article 2(1) of the Exemptions Order require a person to notify the JFSC:

- that the person intends to carry on VCE business;
- that the turnover of that business has been less than GBP150,000 in the calendar year immediately preceding the notification date (current year); and
- the amount of turnover.

The JFSC reserves the right to request additional information as it thinks fit under its general powers provided by the 2008 Law. Jersey’s sandbox approach fosters innovation by lowering the compliance burden on start-ups, and allows such VCEs to test their exchange mechanisms without a heavy regulatory burden.

2.6 Jurisdiction of Regulators

The JFSC is responsible for the regulation, supervision and development of the financial services industry on the Island of Jersey for the following:

- banking;
- collective investment funds;
- fund services business;
- insurance business;
- general insurance mediation business;
- investment business;
- money service business; and
- trust and company service providers.

The JFSC has entered into Memoranda of Understanding (or statements of co-operation/letters of intent) on regulatory matters with a number of fellow regulatory authorities. These Memoranda cover regulatory assistance to be given in the context of:

- new applications for licensing by financial institutions;
- investigations into regulatory offences such as insider dealing; and
- general enquiries that are relevant to the fitness and properness of registered institutions.

The JFSC has entered into such Memoranda with a wide range of countries, from Australia and Gibraltar to Luxembourg and the United States of America.

The JFSC does not require a Memorandum of Understanding to be in place with an overseas regulatory authority before it will co-operate with, or share information with, that authority. The purpose of a Memorandum of Understanding is to establish

an agreed mechanism under which the signatories commit to using their statutory powers of co-operation to assist each other.

2.7 Outsourcing of Regulated Functions

The JFSC's Outsourcing Policy and Guidance Notes (Outsourcing Policy) provide guidance to regulated entities (Registered Person) on the establishment of outsourcing arrangements and the outsourcing of material functions or activities.

The Outsourcing Policy is based on the basic premises that:

- a Registered Person remains fully responsible and accountable to the JFSC for any outsourced activity; and
- a Registered Person must not, as a consequence of any outsourcing arrangements, become devoid of functions to the extent that it becomes a "letter box" entity.

The Outsourcing Policy operates on the basis of six core principles, as follows:

- fit and proper service provider – a Registered Person must satisfy itself that any service provider to whom it outsources activities is fit and proper and will perform the outsourced activities in a responsible, professional and suitable manner;
- written outsourcing agreement – a Registered Person must have appropriate written agreements in place with any service providers to whom it outsources activities;
- monitoring and assessing service provider – a Registered Person must maintain the capacity, resources, policies and procedures to ensure that any outsourced activities are being performed adequately and the service provider remains fit and proper;
- termination of outsourcing arrangements – a Registered Person must put arrangements in place that allow it to terminate its outsourcing arrangements without undue delay and manage the consequences of any such termination appropriately;
- prior approval of JFSC – a Registered Person must provide the JFSC with adequate prior written notice of its intention to outsource activities or make material changes to any existing outsourcing arrangements. A Registered Person must not enter into any outsourcing arrangement until it has received prior written confirmation from an officer of the JFSC that the JFSC has no objection to such outsourcing arrangements; and
- JFSC's regulatory powers – a Registered Person must ensure that nothing in any of its outsourcing arrangements prevents or restricts the JFSC's ability to exercise its legal or regulatory powers.

2.8 Significant Enforcement Actions

As digital assets are currently not regulated, the JFSC does not have enforcement powers over digital assets, unless they fall within a regulated activity.

2.9 Implications of Additional Regulation

Jersey has anti-money laundering legislation in place requiring entities that conduct "relevant financial business" to comply with the anti-money laundering requirements. This legislation does not differ between legacy participants and fintech participants.

Entities conducting relevant business are required to comply with certain AML/CFT requirements, in accordance with the Proceeds of Crime (Jersey) Law 1999, as amended, the Money Laundering (Jersey) Order 2008 (Money Laundering Order) and the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (AML/CFT Handbook), known together as the AML/CFT Laws.

The Money Laundering Order ensures that the obligations that are imposed on financial services businesses to prevent and detect money laundering take account of changes in money-laundering methods and techniques, and protect and enhance the reputation and integrity of Jersey in commercial and financial matters.

The AML/CFT Handbook establishes standards that match international standards issued by the Financial Action Task Force in relation to anti-money laundering and countering the financing of terrorism.

In addition, Jersey also has data protection legislation – the Data Protection (Jersey) Law 2018 (Data Protection Law) requires entities within scope to comply with the data protection principles defined in the legislation.

The Data Protection Law is based around the following six principles of "good information handling":

- fair, lawful and transparent processing – personal data is to be processed lawfully, fairly and in a transparent manner;
- purpose limitation – personal data must be collected for specific, explicit and legitimate purposes and, once collected, not further processed in a manner incompatible with those purposes;
- excessive data collection – personal data collected must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
- accuracy of data – personal data must be accurate and, where necessary, kept up to date, with reasonable steps being taken to ensure that personal data that is inaccurate, having

regard to the purposes for which it is processed, is erased or rectified without delay;

- storage limitation – personal data must be kept in a form that permits the identification of data subjects for no longer than is necessary for the purposes for which the data is processed; and
- data security, integrity and confidentiality – personal data must be processed in a manner that ensures the appropriate security of the data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

2.10 Regulation of Social Media and Similar Tools

The use of social media and similar tools is not currently regulated in Jersey, apart from the previously defined legislation, such as the Data Protection Law.

2.11 Review of Industry Participants by Parties Other Than Regulators

Jersey-based service providers (eg, auditors or administrators) to digital assets entities are required to comply with Jersey law. If any person who is resident in Jersey has a suspicion that a transaction involving a Jersey entity is financed, even partially, with the proceeds of criminal conduct, that person is required to report such suspicion, in accordance with the Proceeds of Crime (Jersey) Law 1999, as amended.

In addition, ICO issuing companies are required to have their annual accounts audited and filed with the registrar in accordance with Article 108 of the Companies (Jersey) Law 1991, irrespective of their status (whether a public or private company).

2.12 Conjunction of Unregulated and Regulated Products and Services

The offering of digital assets is not currently regulated, unless the activity falls within the definition of a financial services business that is currently regulated. Where an entity's activities fall within the scope of regulated activities, its operations will be subject to supervision by the JFSC.

While ICOs are not regulated by the JFSC, ICO issuing companies are required to comply with certain conditions (as set out in the JFSC's ICO Guidance Note and such companies' consent certificates) that are designed to ensure that they meet specific standards in terms of governance, investor disclosure and AML/CFT compliance.

3. Robo-Advisers

3.1 Requirement for Different Business Models

Jersey legislation does not expressly contemplate robo-advisers. To the extent that a legal entity holds software that provides robo-adviser functions and that legal entity is a Jersey entity or a non-Jersey entity registered in Jersey, it may be required to be registered or licensed by the JFSC.

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

As far as is known, no Jersey service providers are introducing robo-advisers at this stage.

3.3 Issues Relating to Best Execution of Customer Trades

This is not applicable in Jersey.

4. Online Lenders

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

Banking business in Jersey is governed by the Banking Business (Jersey) Law 1991, as amended. The provision of loans is also within the scope of Jersey's AML/CFT legislation, which does not distinguish between the recipients of the loans.

4.2 Underwriting Processes

The underwriting process is currently not regulated in Jersey. Instead, the JFSC will require lenders to be in compliance with the laws of the jurisdiction in which the underwriting is taking place (which is typically onshore).

4.3 Sources of Funds for Loans

This is not applicable in Jersey.

4.4 Syndication of Loans

The syndication of loans takes place onshore rather than in Jersey. Accordingly, to the extent that the Jersey lending vehicle is involved in a syndication, it must be in compliance with the laws of such onshore jurisdiction.

5. Payment Processors

5.1 Payment Processors' Use of Payment Rails

Payment processing is not currently regulated in Jersey. Payment processors must use existing payment rails at this stage.

5.2 Regulation of Cross-border Payments and Remittances

Jersey participates in the Single Euro Payments Area 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. Jersey has also adopted the Wire Transfer Regulation (EU) (2015/847).

6. Fund Administrators

6.1 Regulation of Fund Administrators

Jersey-based administrators must hold a licence, in accordance with the Financial Services (Jersey) Law 1998, as amended (FS Law).

The conducting of administration business by an administrator requires examination of the nature of the services which will be provided, as well as the classification of the person to whom services will be provided. Both are key in assessing the regulation to which the administrator will be subject and whether a relevant exemption will apply, as set out below:

- Trust Company Business (TCB):
 - (a) an administrator who carries on trust company business will require registration under the FS Law (unless an applicable exemption applies); and
 - (b) such administrator must also comply with the JFSC's Code of Practice for Trust Company Business (TCB Code).
- Fund Services Business (FSB):
 - (a) an administrator who acts as an administrator in relation to certain funds (ie, services provided to a collective investment fund or an unregulated fund) would be conducting fund services business under the FS Law and, accordingly, would require registration under the FS Law for this purpose. In this case, the administrator would also be required to comply in full with the JFSC's Code of Practice for Fund Services Business (FSB Code) and any related requirements.
- Investment Business (IB):
 - (a) an administrator who carries on investment business will require registration under the FS Law (unless an applicable exemption applies); and
 - (b) such administrator must also comply with the JFSC's Code of Practice for Investment Business (IB Code).

The Financial Services (Trust Company Business (Exemptions No5)) (Jersey) Order 2000 contains an important exemption in relation to the provision of administration services to a professional investor regulated scheme. An administrator will be exempted from the FS Law when it is providing services as

described in Article 2(4) of the FS Law to a professional investor regulated scheme as defined in Article 3 of the Financial Service (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001. There is no applicable exemption in respect of fund services business.

An investment scheme is a professional investor regulated scheme if relevant consent has been granted, in accordance with the Control of Borrowing (Jersey) Order 1958, and each investor in the scheme has made a minimum subscription of GBP250,000 or is a professional investor as defined in the Exemption Order, and has signed an investment warning.

6.2 Contractual Terms

A number of provisions are being incorporated into fund administration documents, many of which stem from regulatory obligations and, in particular, Jersey's AML/CFT legislation. Essentially, fund administration agreements must include provisions requiring the administrator to provide either the regulated fund itself or the JFSC with information and documentation that is relevant to anti-money laundering requirements.

Jersey's AML/CFT legislation also requires the fund administrator to maintain records of anti-money laundering documentation for at least five years after the conclusion of a transaction. These agreements also require the administrator to report any suspicions it may have in relation to money laundering potentially occurring through the fund to the fund's money-laundering reporting officer.

In addition to AML/CFT requirements, Jersey fund administration agreements often contain provisions requiring the administrator to safeguard and treat personal data in accordance with certain prescribed standards, including the Data Protection Law.

6.3 Fund Administrators as “Gatekeepers”

A Jersey-regulated fund administrator has certain reporting obligations to the JFSC regarding the operation of a fund that it administers. A licensed fund administrator must immediately give the JFSC written notice if it knows or has reason to believe that a fund for which it provides services:

- is or is likely to become unable to meet its obligations as they fall due;
- is carrying on business other than in accordance with any laws; or
- is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the fund, giving its reason for that knowledge or belief.

Jersey's defences against the laundering of criminal funds and terrorist financing rely heavily on the vigilance and co-operation of the finance sector. Specific financial sector legislation (Money Laundering (Jersey) Order 2008) is therefore also in place, covering a person conducting financial services business in or from within Jersey, and a Jersey body corporate or other legal person registered in Jersey conducting financial services business anywhere in the world.

Jersey's primary legislation on countering money laundering and the financing of terrorism includes:

- the Proceeds of Crime (Jersey) Law 1999, as amended (Proceeds of Crime Law);
- the Terrorism (Jersey) Law 2002 (Terrorism Law);
- the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (Directions Law); and
- the Terrorist Asset-Freezing (Jersey) Law 2011, Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002, EU Legislation (Sanctions – Afghanistan) (Jersey) Order 2014, EU Legislation (Sanctions – Al Qaida) (Jersey) Order 2014 and EU Legislation (Sanctions – ISIL (Da'esh) and Al-Qaida) (Jersey) Order 2016 (together known as the Terrorist Sanctions Measures).

7. Marketplaces, Exchanges and Trading Platforms

7.1 Permissible Trading Platforms

The International Stock Exchange in the Channel Islands (TISE) permits trading in listed securities.

Trading is conducted every weekday, excluding public holidays, and takes place on a continuous basis during normal trading hours. Trading members of TISE may also trade outside these hours.

Orders and quotations can only be entered into the trading system by a trading member, and may be added, deleted or amended on the trading system by them in the hour prior to normal trading hours. While there are no restrictions on viewing the information contained in the trading system, investors and issuers who wish to trade at a price displayed must do so through a trading member.

A trading member may register as a market maker in any number of listed securities and, if they do so, must enter and maintain two-sided quotations on the trading system, with quotations reasonably related to prevailing market conditions and within allowable spreads, while also at least in the specified minimum quoted size for the security. They must also actively

offer to buy from and sell to an enquiring trading member at the price and in a size up to that which is displayed.

Trading in shares may be settled via Euroclear (incorporating CREST and CREST Residual), Clearstream or an alternative settlement system approved by TISE before listing.

7.2 Regulation of Different Asset Classes

Debt securities are listed on TISE under chapter 6 of the Listing Rules. Equity securities are listed on TISE under chapter 2 of the Listing Rules.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

The VCE regulations make VCEs subject to Jersey's AML/CFT legislation.

By treating virtual currency as a currency, Jersey's current AML/CFT regulation was extended to virtual currencies, demonstrating Jersey's ability to adapt quickly to the disruption posed by fintech innovations within existing frameworks.

7.4 Listing Standards

Debt securities and equity securities can be listed on TISE. The Listing Rules of TISE contain the application procedures and the listing document requirements.

An issuer must produce a Listing Document in relation to the application, and must comply with the requirements relating to Listing Documents set out in the Listing Rules.

TISE may waive, modify or not require compliance with Listing Rules in individual cases.

The listing process essentially involves the review and approval of an offering document, which is referred to as listing particulars, and certain ancillary documents, which must demonstrate compliance with the Listing Rules. The listing particulars must include all the information necessary for an investor to make an informed decision on its investment.

In unusual transactions, TISE can be contacted at an early stage, to provide informal and confidential guidance as to the suitability of a proposed listing application.

7.5 Order Handling Rules

This is not applicable in Jersey.

7.6 Rise of Peer-to-Peer Trading Platforms

This is not applicable in Jersey.

7.7 Issues Relating to Best Execution of Customer Trades

This is not applicable in Jersey.

7.8 Rules of Payment for Order Flow

This is not applicable in Jersey.

8. High-Frequency and Algorithmic Trading

8.1 Creation and Usage Regulations

There are currently no regulations in Jersey specifically regulating the creation and usage of high-frequency and algorithmic trading; however, such activities fall within the definition of financial services business and are therefore subject to supervision by the JFSC.

8.2 Exchange-like Platform Participants

See 8.1 **Creation and Usage Regulations**. There are currently no regulations in Jersey specifically regulating the creation and usage of high-frequency and algorithmic trading.

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

This is not currently applicable in Jersey.

8.4 Issues Relating to the Best Execution of Trades

This is not currently applicable in Jersey.

8.5 Regulatory Distinction Between Funds and Dealers

Jersey-domiciled investment funds that engage in these activities need to be registered under the Collective Investment Funds (Jersey) Law 1988, as amended (CIF Law) if they are open-end funds. Jersey-domiciled investment managers for such funds need to be registered or licensed under the Financial Services (Jersey) Law 1998, as amended.

8.6 Rules of Payment for Order Flow

This is not currently applicable in Jersey.

9. Financial Research Platforms

9.1 Registration

The Jersey-domiciled operators of such research platforms are currently not subject to registration, unless such platforms also provide investment advice, in which case, the operator of the platform needs to be registered or licensed under the Financial Services (Jersey) Law 1998, as amended.

9.2 Regulation of Unverified Information

The spreading of rumours and other unverified information is currently not regulated in Jersey. The JFSC would require the Jersey-domiciled operator of such platform to comply with the laws of the jurisdiction in which the platform is operating.

9.3 Conversation Curation

See 9.2 **Regulation of Unverified Information**.

9.4 Platform Providers as “Gatekeepers”

Jersey-based service providers are required to comply with Jersey law. If any person who is resident in Jersey has a suspicion that a payment to a Jersey entity (by way of subscription or otherwise) is financed, even partially, by the proceeds of criminal conduct, that person is required to report such suspicion, in accordance with Jersey’s AML/CFT legislation.

10. Insurtech

10.1 Underwriting Processes

As far as is known, there are no specific and material insurtech underwriting initiatives or developments in Jersey.

10.2 Treatment of Different Types of Insurance

Any person conducting insurance business in Jersey is required to hold a valid licence issued for that purpose under the Insurance Business (Jersey) Law 1996, as amended.

11. Regtech

11.1 Regulation of Regtech Providers

The regulation of regtech providers is dependent on their activities. Where an entity’s activities fall within the scope of regulated activities, its operations will be subject to supervision by the JFSC.

11.2 Contractual Terms to Assure Performance and Accuracy

A number of provisions are being incorporated into contracts with technology providers, generally related to data protection, the protection of IP rights and confidentiality. The contracts often have provisions requiring the technology providers to safeguard and treat personal data in accordance with certain prescribed standards under the Data Protection Law.

11.3 Regtech Providers as “Gatekeepers”

Jersey-based service providers are required to comply with Jersey law. If any person who is resident in Jersey has a suspicion that a payment to a Jersey entity (by way of subscription or otherwise) is financed, even partially, by the proceeds of criminal

conduct, that person is required to report such suspicion, in accordance with Jersey's AML/CFT legislation.

12. Blockchain

12.1 Use of Blockchain in the Financial Services Industry

Jersey is one of the jurisdictions at the forefront of fintech innovation. Jersey's funds regime has been used to establish innovative alternative funds, including:

- GABI – the world's first regulated bitcoin investment fund, established as a Jersey Expert Fund in 2014;
- CoinShares Fund – investing in ICOs and other digital assets, established as a Jersey Private Fund; and
- SoftBank Vision Fund – with about USD100 million or more in commitments for technology-focused investments, ranging from the internet of things and mobile apps to cloud technology and artificial intelligence (AI), this is also a Jersey Private Fund.

The above funds are testament to Jersey's well-tested structures, with which both managers and investors are familiar.

12.2 Local Regulators' Approach to Blockchain

The VCE regulations (effective since 2016) require virtual currency exchanges to comply with Jersey AML/CFT legislation, and the JFSC's ICO Guidance Note (published in July 2018) provides guidance on the approval process for companies' issuing of ICOs.

12.3 Classification of Blockchain Assets

There is no formal guidance on whether the JFSC considers blockchain assets to be a form of regulated financial instrument.

The JFSC's ICO Guidance Note highlights that there is no universally recognised terminology for the classification of crypto-tokens, either in Jersey or internationally. However, for the purposes of Jersey law, tokens issued in accordance with an ICO must be classified either as a "security" or not. In determining whether tokens will be classified as a "security" for the purposes of Jersey law, the JFSC will consider the economic function, underlying purpose and transferability of such tokens. In brief summary:

- a security token would typically have the characteristics associated with an equity or debt security, including a right to participate in the profits of the ICO issuer, a claim on the ICO issuer's assets and/or an expectation of a return on the amount paid for the tokens; and

- a non-security token would typically either confer a usage right to a product or service and have no economic rights (ie, a utility token), or be designed to provide a store of value and medium of exchange (ie, a cryptocurrency token).

12.4 Regulation of "Issuers" of Blockchain Assets

The JFSC's ICO Guidance Note provides guidance on how ICOs will be approved in Jersey through existing laws and regulation.

Although ICOs in Jersey are not regulated by the JFSC, the JFSC has established certain conditions that any issuer of an ICO registered in Jersey is required to satisfy. These are implemented through a consent granted by the JFSC, which any Jersey entity wishing to issue an ICO must obtain.

The consent requires ICO issuers to take certain measures to manage financial crime and investor risks, reflecting the principles of the JFSC, which are to have regard to:

- the reduction of the risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers;
- the protection and enhancement of Jersey's reputation and integrity in commercial and financial matters;
- the best economic interests of Jersey; and
- the need to counter financial crime both in Jersey and elsewhere.

The JFSC recognises the innovative potential of distributed ledger/blockchain technology and fintech more generally, and supports efforts to responsibly innovate in fintech in Jersey. However, the JFSC has also issued a public advisory to warn of the risks associated with initial coin offerings, including their highly speculative nature and the risks caused by ICO price volatility.

Where a Jersey ICO issuing company has been granted a consent by the JFSC under the Control of Borrowing (Jersey) Law 1947, it must be understood that the JFSC does not take any responsibility for the financial soundness of any schemes or for the correctness of any statements made or opinions expressed with regard to them.

12.5 Regulation of Blockchain Asset Trading Platforms

The VCE regulations (effective since 2016) require virtual currency exchanges to comply with Jersey AML/CFT legislation, subject to a regulatory sandbox for start-ups, which allows those virtual currency exchanges whose turnover does not exceed GBP150,000 to test their mechanisms without the burden of full regulatory compliance.

12.6 Regulation of Invested Funds

Jersey offers a wide range of fund products, including the following:

- Jersey Private Fund (JPF) – this regime (launched in April 2017) simplified and streamlined Jersey’s fund offering. Based on industry feedback and an analysis of competitor products in other jurisdictions, the regime represents a welcome development in the product range offered by Jersey, and recognises the need for regulatory flexibility for private funds targeted at investors at a professional level of sophistication. JPFs can be marketed to a maximum of 50 professional or eligible investors, such as those investing a minimum of USD250,000 (or currency equivalent) each.
- Jersey Expert Fund – this regime is attractive to promoters wishing to establish funds aimed at sophisticated, institutional and high net worth investors. A collective investment fund will qualify as an Expert Fund if each investor signs an acknowledgement of receipt of a prescribed form of investment warning and the Expert Fund is only offered to investors falling within one of the categories of “Expert Investor” (including investing a minimum of USD100,000, or currency equivalent, or having a net worth exceeding USD1,000,000, excluding that person’s principal place of residence, among others).

Although Jersey Expert Funds are subject to a higher degree of regulation than Jersey Private Funds, Expert Funds are open to an unlimited number of investors, whereas JPFs can only be marketed to a maximum of 50 professional investors.

The JFSC has demonstrated that Jersey is open to innovative, cutting-edge investment structures, thereby standing out from other competitor jurisdictions, using Jersey’s existing funds product range.

12.7 Virtual Currencies

See **12.5 Regulation of Blockchain Asset Trading Platforms.**

12.8 Impact of Privacy Regulation on Blockchain

Jersey’s Data Protection Law (largely) applies the requirements of the EU’s General Data Protection Regulation (GDPR).

The transparency and immutability of data stored on the blockchain is potentially incompatible with the data protection requirements of the Data Protection Law/GDPR, and therefore careful consideration must be given to the interaction between the blockchain and the Data Protection Law/GDPR.

However, blockchain technology also provides potential solutions and opportunities to comply with such new data protection requirements, including:

- a hybrid of public and private blockchains to provide for data privacy;
- the encryption and pseudonymisation of data held on the blockchain; and/or
- the encryption of entries and the subsequent deletion of the relevant decryption keys in order to comply with the GDPR’s right to be forgotten.

Blockchain may be disruptive but that does not mean it cannot be compliant with legal and regulatory requirements – indeed, it is in such innovation that new, disruptive solutions to legal and regulatory requirements may be found.

13. Open Banking

13.1 Regulation of Open Banking

Although Jersey is not a member of the European Union, it has introduced the EU Legislation (Payment Services – SEPA) (Amendment) (Jersey) Regulations 2015 (Jersey SEPA Regulations) in order for Jersey banks to be able to participate in the Single European Payments Area (SEPA). This means that payments in Euros can be made by Jersey banks to and from banks in the SEPA that are subject to the protections and support of the SEPA rules.

By participating in SEPA, Jersey aims to increase the efficiency, and lower the costs, of cross-border payment processing within the EU/EEA, through the development of common standards, procedures and infrastructure.

The Jersey SEPA Regulations position Jersey to maximise the opportunities that the Payment Services Directive (PSD 2) – which extends SEPA to new types of payment services to create a digital single market within Europe – will bring for fintech and the wider industry.

13.2 Concerns Raised by Open Banking

See **12.8 Impact of Privacy Regulation on Blockchain.**

JERSEY 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-

veloping their own fintech products and services. The fintech group, comprising over 60 lawyers, 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 in advising businesses specialising in blockchain, digital assets and alternative model finance.

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