

THE FINANCIAL  
TECHNOLOGY  
LAW REVIEW

SECOND EDITION

Editor  
Thomas A Frick

THE LAWREVIEWS

THE FINANCIAL  
TECHNOLOGY  
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# CONTENTS

PREFACE.....	vii
<i>Thomas A Frick</i>	
Chapter 1	IMPACT OF THE NEW INFOSEC AND EU PRIVACY REQUIREMENTS ON BANKS AND FINANCIAL INSTITUTIONS' USE OF CLOUD COMPUTING.... 1
<i>Roy Kamp and Noémie Weinbaum</i>	
Chapter 2	AUSTRALIA..... 12
<i>Peter Reeves</i>	
Chapter 3	AUSTRIA..... 26
<i>Oliver Völkel and Bryan Hollmann</i>	
Chapter 4	BELGIUM ..... 35
<i>Pierre E Berger, Stéphanie Liebaert and Marc Van de Looverbosch</i>	
Chapter 5	BRAZIL..... 49
<i>Alexei Bonamin, Carla do Couto Hellu Battilana, Ivan Antonio Monteiro Marques, Maria Eugenia Geve de Moraes Lacerda, Thaís Helena Valente Teixeira Lima and Victor Cabral Fonseca</i>	
Chapter 6	BRITISH VIRGIN ISLANDS ..... 59
<i>Stephen Adams</i>	
Chapter 7	CAYMAN ISLANDS ..... 66
<i>Stephen Nelson</i>	
Chapter 8	FRANCE..... 75
<i>Eric Roturier</i>	
Chapter 9	GERMANY..... 85
<i>Jens H Kunz</i>	

## Contents

---

Chapter 10	GUERNSEY .....	101
	<i>Wayne Atkinson</i>	
Chapter 11	ITALY .....	110
	<i>Giuseppe Rumi, Federico Vezzani and Tommaso Faelli</i>	
Chapter 12	JAPAN .....	125
	<i>Asushi Okada, Takane Hori and Takahiro Iijima</i>	
Chapter 13	JERSEY.....	138
	<i>Dilmun Leach</i>	
Chapter 14	KOREA .....	149
	<i>Jung Min Lee, Joon Young Kim and Samuel Yim</i>	
Chapter 15	LUXEMBOURG.....	163
	<i>Anne-Marie Nicolas, Álvaro Garrido Mesa, Konstantinos Georgiou and Sandy Brumberg</i>	
Chapter 16	MALAYSIA .....	177
	<i>Shanthy Kandiah</i>	
Chapter 17	MEXICO .....	188
	<i>Federico de Noriega Olea and Juan Enrique Lizardi Becerra</i>	
Chapter 18	NETHERLANDS.....	198
	<i>Martijn Schoonewille, Wendy Pronk, Marije Louise, Mariska Kool and Pepijn Pinkse</i>	
Chapter 19	PORTUGAL.....	209
	<i>Tiago Correia Moreira, Helena Correia Mendonça, Conceição Gamito and José Miguel Carracho</i>	
Chapter 20	RUSSIA .....	220
	<i>Roman Buzko</i>	
Chapter 21	SINGAPORE.....	231
	<i>Adrian Ang V-Meng and Alexander Yap Wei-Ming</i>	
Chapter 22	SPAIN.....	239
	<i>Leticia López-Lapuente and Isabel Aguilar Alonso</i>	

## Contents

---

Chapter 23	SWITZERLAND.....	250
	<i>Thomas A Frick</i>	
Chapter 24	TAIWAN.....	262
	<i>Abe T S Sung and Eddie Hsiung</i>	
Chapter 25	UNITED KINGDOM.....	271
	<i>Gareth Malna and Sarah Kenshall</i>	
Chapter 26	UNITED STATES.....	283
	<i>Jordan Altman and Reena Agrawal Sahni</i>	
Appendix 1	ABOUT THE AUTHORS.....	293
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	311

# PREFACE

This is already the second edition of *The Financial Technology Law Review*. Concerns about new developments that blockchain, big data and AI will trigger in the finance sector have not disappeared since the first edition. However, the use of IT in the finance sector is not new and many applications that would be labelled today as fintech are already quite old, at least by today's standards. Financial market participants and their legal advisers already have considerable experience in implementing such changes. As far as improved support products are concerned, the general rules of financial regulations can be applied quite easily to new developments.

Some of the recent developments may already have seen their peak, for example, the great number of cryptocurrencies imitating bitcoin. Others, in particular stablecoins and security tokens, but also robo-advisers and the use of big data, AI and other blockchain applications, may still be at an early stage. They may have the potential to disrupt the industry, at least in some of its sectors. Again, there has been more scepticism, not only in a recent report by the Bank for International Settlements but also in management consultant studies such as 'Blockchain's Occam problem', arguing that blockchain is a technology in search of a problem.

Regulators' surprise about the sheer dynamism of these advances – both the speed of the technical developments and the speed with which such new possibilities were implemented – has ebbed and a number of countries have started to draft (or have already implemented) new laws or changes to their current laws to address fintech issues. This is particularly the case in the area of anti-money laundering rules, a prime concern not only of regulators but also of banks and other financial market participants. Unless the industry can be certain that participating in the crypto-economy will not lead to increased anti-money laundering risks, established financial players remain cautious.

The national solutions chosen (and the speed with which regulators are willing to react by providing guidelines to market participants) varies considerably between jurisdictions. This may be a consequence of different regulatory cultures, but in addition, the existing legal systems may pose varying and unplanned obstacles to the some of the new applications. It may, for example, be difficult to transfer rights on the blockchain if the national code prescribes that rights can only be assigned in writing. Therefore, a structured collection of overviews over certain aspects of fintech law and regulation such as the present one continues to be valuable not only for the international practitioner, but also for anyone who looks for inspiration on how to deal with hitherto unaddressed and unthought-of issues under the national law of any country.

The authors of this publication are from the most widely respected law firms in their jurisdictions. They each have a proven record of experience in the field of fintech; they know



both the law and how it is applied. We hope that you will find their experience invaluable and enlightening when dealing with any of the varied issues fintech raises in the legal and regulatory field.

The emphasis of this collection is on the law and practice of each of the jurisdictions, but discussion of emerging or unsettled issues has been provided where appropriate. The views expressed are those of the authors and not of their firms, of the editor or of the publisher. In a fast-changing environment, every effort has been made to provide the latest intelligence on the current status of the law.

**Thomas A Frick**

Niederer Kraft Frey

Zurich

April 2019

# JERSEY

*Dilmun Leach*<sup>1</sup>

## I OVERVIEW

In recent years, Jersey has made a concerted effort to position itself as a financial technology hub. In 2015, legislation was introduced that exempted virtual currency exchanges with a turnover of less than £150,000 from certain anti-money laundering (AML) requirements to encourage innovation from start-ups in the sector. In 2018, significant progress was made in respect of virtual token offerings (including security token offerings (STOs) and initial coin offerings (ICOs)), and the states of Jersey and the Jersey Financial Services Commission (JFSC) have shown a strong willingness to engage constructively with new forms of fundraising.

## II REGULATION

### i Licensing and marketing

#### *Financial services business*

The JFSC oversees the regulation of financial services on the island. Anyone wishing to conduct financial services business or deposit-taking business in or from within Jersey will need to register with the JFSC, unless an exemption applies. The JFSC prepares and issues codes of practice that set out both broad principles and detailed requirements to which financial services business in Jersey must adhere. Financial services businesses carrying on regulated activities in or from within Jersey must be authorised to do so by the JFSC, unless an exemption applies.

Article 2 of the Financial Services (Jersey) Law 1998 (FSJL) defines ‘financial services business’ as follows:

*A person carries on financial service business if by way of business the person carries on investment business, trust company business, general insurance mediation business, money service business, fund services business or AIF services business.*

The most likely of these categories to be relevant to financial technology businesses are investment business and money service business. We have set out the basic definitions below but, depending on the specific facts of a case, there are various exemptions available that may allow a person to be exempt from the requirement to register under the FSJL.

---

<sup>1</sup> Dilmun Leach is a group partner at Collas Crill LLP.

### *Investment business*

A person carries on investment business if that person:

- a* deals in investments, that is, the person buys, sells, subscribes for or underwrites investments, either as principal or as agent;
- b* undertakes discretionary investment management, that is, the person decides as agent to buy, sell, subscribe for or underwrite investments on behalf of a principal; or
- c* gives investment advice, that is, the person gives to persons in their capacity as investors or potential investors advice on the merits of:
  - the purchase, sale, subscription for or underwriting of a particular investment; or
  - the exercise of a right conferred by an investment to acquire, dispose of, underwrite or convert the investment.

The definition of investment is set out in a schedule to the FSJL and includes shares, debentures, instruments entitling to shares or securities, certificates representing securities, units in a collective investment trust, options, futures, contracts for difference, long-term insurance contracts and rights and interests in investments.

### *Money service business*

A person carries on money service business if they carry on the business of any of the following:

- a* a *bureau de change*;
- b* providing cheque cashing services;
- c* transmitting or receiving funds by wire or other electronic means; or
- d* engaging in money transmission services.

### *Bureau de change*

The first category of money service business is *bureau de change*, which is generally taken to mean an office that allows consumers to exchange one currency for another, and charges a commission for the currency exchange service. There is debate as to whether virtual currencies and digital assets comprise currency, a commodity, goods or services, and a view may need to be taken in respect of the particular virtual currency or digital asset if exchange services are being provided in or from within Jersey.

### *Money service business exemption order*

The Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007 (Exemptions Order) (the MSB Order) sets out certain exemptions from the money service business provisions of the FSJL. These are contained in Article 3(2) of the Exemptions Order (the Full Exemptions). The full text is set out below:

*A person who carries on money service business consisting of the transmission or receipt of funds by wire or other electronic means, or the provision of money transmission services, by the person for the sole purpose of any of the following:*

- (a) enabling another person to pay for goods or services;*
- (b) enabling another person to access that other person's funds or that other person's money,*

*is a prescribed person for the purposes of Article 7(2)(a)(ii) of the [FSJL] in relation to that money service business.*

Accordingly, persons falling within the Full Exemptions are exempt from the requirements to comply with the FSJL in respect of money service business.

There is no case law and little guidance around the application of the Full Exemptions, but a virtual currency exchange or similar financial technology business may in certain circumstances be able to rely on the Full Exemptions.

#### *Turnover exemption*

A limited exemption is set out in Article 4 of the MSB Order, which states that a person is exempt from having to register to conduct money service business if:

- a* that person notifies the Commission in writing that he or she intends to carry on money service business; and
- b* the turnover for the last completed financial period for the money service business carried on by that person is less than £300,000.

For the purposes of (b), above, after a person first begins to carry on money service business, the turnover for that business shall be taken to be less than £300,000 until whichever of the following dates is earliest:

- a* the end of the first 18 months after the person begins to carry on the business; or
- b* the date when the turnover in respect of the business for the last completed financial period is ascertained.

If a person was exempt by virtue of the exemption set out above, and the turnover of that person for the last completed financial period that begins within, or immediately follows, the period for which the person was an exempt person by virtue of the exemption set out above, is more than £300,000, that person shall be an exempt person until:

- a* 10 months after the end of that person's last completed financial period for which the turnover is £300,000 or more; or
- b* if the person is a public company, seven months after the end of the last completed financial period for which the turnover is £300,000 or more.

To the extent that a financial technology business were to engage in money service business, they would be exempt from the requirement to register with the JFSC until their turnover exceeded the £300,000 threshold, as detailed above (but, as noted above, the JFSC will need to be notified irrespective of turnover).

#### *Virtual currency exchange*

If an entity will be exchanging fiat currency for cryptocurrency (or vice versa) (for example as part of STO or ICO, or as a stand-alone virtual currency exchange), then it will need to consider if it needs to register with the JFSC as a virtual currency exchange. Procedures in relation to AML and countering the financing of terrorism (CFT) will need to be put in place. In practice, where a Jersey corporate services provider (CSP) has been appointed we would normally expect the AML or CFT process to be set up and administered with compliance staff provided by the CSP, rather than by the virtual currency exchange or STO or ICO issuer itself.

While the general rule is that virtual currency exchanges will be required to register with the JFSC, Jersey introduced innovative amendments to Jersey statute in 2015, which created a safe harbour for exchanges with a turnover of less than £150,000 (exempt exchanges). Exempt exchanges simply have to notify the JFSC that they are exchanging virtual currency, but will not be required to register or pay annual fees to the JFSC. This approach has created a regulatory sandbox, which is targeted at encouraging innovation, allowing new business models, services and products to be tested without undue regulatory burden.

In any event, any person conducting virtual currency exchange business in Jersey will be required to comply with the requirements of the Jersey AML/CFT Handbook. As noted above, in practice this work is often coordinated by and with support from the CSP.

### ***Control of Borrowing (Jersey) Order 1958***

The Control of Borrowing (Jersey) Order 1958 (COBO) requires that the consent of the JFSC be obtained for various activities, including:

- a* to allow a Jersey company to issue shares (in practice this means that every company incorporated in Jersey must have valid COBO consent);
- b* to allow a foreign body corporate to register shares or other securities in Jersey;
- c* to allow a Jersey company to issue any securities other than shares; or
- d* to circulate a prospectus or offer of securities in Jersey.

The JFSC may refuse to grant a COBO consent or may attach such conditions to the COBO consent as it sees fit, and there are a number of exemptions to the above requirements.

### *Securities*

COBO contains a broad definition of securities, which includes shares, bonds, notes, debentures and debenture stock. The JFSC has issued a separate guidance note where virtual tokens are issued in connection with an STO or ICO (see below).

### *Prospectuses*

An exemption is available from the requirement for a non-Jersey entity to obtain a COBO consent for the circulation of an offer of securities in Jersey where articles 8(2)(a) and 8(2)(b) of COBO are satisfied, as follows:

- a* Article 8(2)(a) requires that the body corporate issuing the securities has no relevant connection with Jersey. In summary, any of the following will constitute a relevant connection for the purposes of COBO:
  - the management or administration of the body corporate is wholly or partly carried on in Jersey;
  - control of the body corporate is exercised in or from within Jersey;
  - at the time of the offer, at least one-third of the directors of the body corporate is resident in Jersey;
  - the body corporate has entered into or is about to enter into an agreement with a Jersey resident person material to the offer;
  - a business material to the offer is being carried on by the body corporate in or from within Jersey; or
  - the offer is an offer for exchange of securities issued by a Jersey company or units of a Jersey unit trust scheme; and
- b* Article 8(2)(b) requires either that:

- the offer by the body corporate is not an offer to the public. The offer will not be an offer to the public if it is communicated to no more than 50 persons in Jersey; or
- the offer by the body corporate is a valid offer in the United Kingdom or in Guernsey and is circulated in Jersey only to persons similar to those to whom, and in a similar manner to that in which, the offer is being made in the United Kingdom or Guernsey, as the case may be.

An offer is 'valid in the United Kingdom' if an identical offer is for the time being circulated in the United Kingdom without contravening, effectively, the Financial Services and Markets Act 2000.

### ***Issuing a prospectus***

The Companies (Jersey) Law 1991 (the Companies Law) is Jersey's primary piece of legislation relating to Jersey companies and sets out the requirements for a Jersey company to issue a prospectus in Jersey. A prospectus is defined as an invitation to the public to become a member of a company or to acquire or apply for any securities, for which purposes:

- a* an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons; and
- b* an invitation is not addressed to a restricted circle of persons unless:
  - the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or the inviter's agent;
  - the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
  - the number of persons in Jersey or elsewhere to whom the invitation is so communicated does not exceed 50.

If a prospectus is being issued by a company in respect of its own securities, the issuing company must be a public company. It is a criminal offence for a private company to issue a prospectus in relation its own securities.

A prospectus must comply with certain content requirements set out in the Companies (General Provisions) (Jersey) Order 2002 (CGPO), and include details of:

- a* the offer;
- b* the capital of the issuer;
- c* any amounts written off or provided for in respect of goodwill or preliminary expenses, or of any benefit given to a promoter;
- d* material contracts;
- e* interests of directors;
- f* debentures and loans of the issuer;
- g* the company's latest accounts, including notes on any unusual risks to the investor;
- h* registered office (and principal operating establishments);
- i* directors and secretary;
- j* advisers (including the name and address of the issuer's auditors, legal advisers and principal bankers);
- k* date of issue; and
- l* any other material information.

### ***Crowdfunding***

The JFSC has clarified that in most cases crowdfunding would not be a regulated activity. There are, however, a number of legal considerations to take into account before an entity can engage in crowdfunding. As set out above, the kind of issues that would need to be addressed would be whether a prospectus is required pursuant to the CGPO, or whether additional consents are required pursuant to COBO or whether these would be deposit taking business under the Banking Business (Jersey) Law 1991 (which is outside the scope of this chapter).

#### **ii Cross-border issues**

Jersey is a leading centre in the funds industry, which in recent years has included a focus on technology funds. Notably, SoftBank Group raised its US\$100 billion Jersey domiciled technology fund in 2016. Jersey has never been a Member State of the European Union, but has put in place all of the infrastructure needed to allow funds and other similar investment structures launched in Jersey to be marketed to both UK and EU investors. Jersey has implemented a voluntary regime that mirrors the requirements of the Alternative Investment Fund Managers Directive (AIFMD). While the full AIFMD passport has not yet been extended to non-EU third countries, Jersey funds are able to market to EU investors through the National Private Placement Regimes of EU Member States.

### **III ONBOARDING**

The Electronic Communications (Jersey) Law 2000 (the Communications Law) allows for contractual offer and acceptance to take place by way of an electronic communication (which includes e-signatures).

The Communications Law gives the attributes of an electronic communication as being of its originator if it was dispatched:

- a* by its originator;
- b* by a person who had authority to act on behalf of its originator in respect of the communication; or
- c* by an information system programmed by or on behalf of its originator to operate automatically.

Where a person is required by statute to provide a signature (for example pursuant to the provisions of Jersey companies or securities laws), they will have met that requirement if:

- a* a method is used to identify the person and to indicate the person's approval of the information communicated;
- b* the method used is as reliable as is appropriate for the purposes for which the information is communicated; and
- c* the person to whom the signature is to be provided consents to the method of providing the e-signature (a consent).

The Communication Law states that an electronic communication would not be sufficient to effect offer and acceptance in a contract where the law expressly or impliedly provides otherwise. Certain transactions may require a 'wet ink' signature, or have other formality requirements for example the transfer of Jersey real property.

## IV CRYPTOCURRENCIES AND INITIAL COIN OFFERINGS

The JFSC has published guidance on how ICOs will be approved in Jersey through existing laws and regulation (the Guidance), which has been endorsed by the Jersey government.

As with all Jersey companies (and as set out above), a proposed ICO issuing company will require a consent from the Jersey Companies Registry under COBO), and in considering an application the Registry will have regard to the Registry's Processing Statement (RPS) and the Sound Business Practice Policy (SBPP). In addition to publishing the Guidance, the JFSC has published updated versions of the RPS and the SBPP to specifically address ICOs, and the approach that the JFSC will take in considering applications to form an ICO issuer in Jersey.

The Guidance provides that, as a general rule, Jersey based ICO issuers will be required to be incorporated in Jersey and administered through a licensed CSP in Jersey.

An application to the JFSC must address whether the tokens are a 'security' or not for the purposes of COBO. If the tokens are a security, then absent an exemption an additional consent under COBO will be required for the issue of securities other than shares. If the tokens are not a security, then the additional COBO consent will not be required and the JFSC may consider relaxing some of the conditions that are set out in the Guidance.

In classifying an ICO, the Guidance provides that the JFSC will focus on the economic functions and purpose of the token to be issued and whether the tokens are tradeable or transferable. The definition of security in COBO is broad, and the Guidance states that a token will be considered a security token for Jersey law purposes if it has characteristics usually associated with an equity or debt security, including:

- a* a right to participate in the profits or earnings of the ICO issuer or a related entity;
- b* a claim on the issuer or a related party's assets;
- c* a general commitment from the ICO issuer to redeem tokens in the future;
- d* involvement in the ownership or running of the ICO issuer or a related party; and
- e* expectation of a return of the amount paid for the tokens, with or without interest or other form of gain.

If a token is deemed not to be a security token, it will typically be either:

- a* a utility token, in other words, a token that merely confers on the holder the right to use or access a product or service, with no economic rights or any right to redeem the token for value; or
- b* a cryptocurrency token, in other words, the token is designed to behave like a currency, referred to in some jurisdictions as a payment token.

### **i General requirement for all ICO issuers**

To ensure consistency and provide a streamlined COBO application process, the Guidance requires all ICO issuers to:

- a* be incorporated as a Jersey company (i.e., not be a foundation or limited partnership or other form of vehicle);
- b* receive a consent under COBO before undertaking any activity;
- c* apply relevant AML or CFT requirements to persons that either purchase tokens from or sell tokens back to the issuer of those tokens;
- c* appoint and maintain a duly regulated Jersey CSP;
- d* appoint and maintain a Jersey resident director on the board of the ICO issuer, where the Jersey resident director is also a principal person or key person of the CSP;



- e* obtain the JFSC's prior approval to any change either to the issuer's administrator or the Jersey resident director of the issuer;
- f* prepare and file annual audited accounts with the Jersey Companies Registry;
- g* have procedures and processes in place to (1) mitigate and manage the risk of retail investors investing inappropriately in the ICO; and (2) to ensure retail investors understand the risks involved;
- h* prepare and submit to the JFSC for its approval an Information Memorandum (which may be in the form of a White Paper) that complies with certain content requirements of a prospectus issued by a company under the Companies (Jersey) Law 1991; and
- i* ensure that any marketing material (including the information memorandum) is clear, fair and not misleading.

As with all new incorporations, the JFSC has reserved the right to consider each application on its own merits, so while the conditions set out above offer helpful guidance on the approach the JFSC is likely to take, they are by no means definitive.

## **ii Jersey legal advice**

The Guidance provides that an application under COBO in respect of an ICO issuer must be accompanied by analysis prepared by a Jersey law firm outlining:

- a* the proposed activity including relevant timelines;
- b* details of the issuer and the ICO;
- c* the rationale for the ICO, amount to be raised and use of proceeds;
- d* a summary of the features of the tokens;
- e* a summary of purchase and redemption processes;
- f* service providers to the issuer;
- g* the relationship between the issuer and the holder of the tokens;
- h* the management of underlying assets and security rights over such assets for holders of the tokens;
- i* how the activity will be wound up or dissolved and assets distributed to the holders of the tokens; and
- j* a Jersey legal and regulatory analysis considering applicable law and regulation (including laws in respect of investment funds, financial services, banking, AIFMD, proceeds of crime and AML).

## **iii CSP requirements**

The Guidance provides that, prior to a Jersey CSP agreeing to act as the administrator of an ICO, and on an ongoing basis, it must take steps to satisfy itself as to a number of factors, including:

- a* the honesty and integrity of the issuer and the persons associated with it;
- b* the issuer's approach to acting in the best interests and needs of each and all of its customers;
- c* the adequacy of the issuer's financial and non-financial resources;
- d* how the issuer will manage and control its business effectively, and ensure that it will conduct its business with due skill, care and diligence;
- e* the effectiveness of the issuer's arrangements in place for the protection of client assets and money when it is responsible for them;
- f* the effectiveness of the issuer's corporate governance arrangements;

- g* what systems the issuer has in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing; and
- h* the issuer's marketing strategy, including the types of persons to whom the ICO will be marketed, how it will be marketed, and the jurisdictions in which it will be sold or marketed (including consideration of any relevant laws or restrictions that may apply in other jurisdictions).

The Guidance also summarises the JFSC's expectations in relation to ICO issuers mitigating the risk of anti-money laundering and countering the financing of terrorism.

#### **iv Retail investors**

The Guidance provides that an ICO issuer must take appropriate steps to mitigate and manage the risks of retail investors investing inappropriately in ICOs. In this regard, the Guidance contains a safe harbour process including an approved risk warning that must be actively confirmed by each investor as being understood and accepted.

#### **v Marketing and offer document**

All marketing materials must be clear, fair and not misleading, and contain prescribed wording in respect of the role of the JFSC in approving the ICO. In particular, the JFSC does not regulate an ICO issuer as such, although the approval procedure set out in the Guidance mandates a set of conditions designed to ensure that the issuer meets specific standards in terms of governance, investor disclosure, anti-money laundering and countering the financing of terrorism.

The offering document must comply with the content requirements set out in the CGPO, and contain the specific statements set out in the Guidance. In addition, prior to the issuance of any tokens, the JFSC must confirm that it has no objection to the issue of the offer document.

#### **vi Ongoing requirements**

The Guidance provides certain ongoing requirements, including:

- a* the board of directors of the ICO issuer must notify the JFSC if it defaults on any tokens issued;
- b* the board must make an annual filing to the JFSC confirming that there has been no breach of the conditions attached to the consent or consents issued under COBO;
- c* the ICO issuer must seek the prior consent of the JFSC to any material change to the matters set out in the application for a consent under COBO; and
- d* prior JFSC consent is required for any change in Jersey CSP, or any change in Jersey resident director.

#### ***ICO application form***

In addition to the Guidance the JFSC has published an application form that potential ICO issuers will be required to complete. The form requires details of:

- a* the consent being sought;
- b* the corporate services provider;
- c* the issuing entity (including details of the ultimate beneficial owners);

- d* the issue, including the type of token being issued, a description of the rationale behind the issue and any underlying assets;
- e* the legal relationship that will be created between the issuer and holders of the tokens, including a description of how the token holders will benefit from the activity being funded by the ICO;
- f* the ICO's target market;
- g* the steps taken to protect purchasers of the tokens;
- b* details of who will take responsibility for the contents of the information document or white paper, and whether it will be issued in a language other than English;
- i* whether the ICO will comply with the JFSC's Sound Business Practice Policy;
- j* whether the tokens will be securities for the purposes of COBO, or whether the ICO issuer will be carrying on another regulated activity;
- k* whether the issuer will be an AIF for the purposes of AIFMD; and
- l* whether the issuer will also be a virtual currency exchange under the Jersey virtual currency exchange regime, which was introduced in 2015.

Potential issuers will also be required to complete a memorandum of compliance in a form appended to the application form for any information document or white paper produced in respect of the ICO, which includes a checklist containing various information statements that must be included pursuant to the CGPO (as described above).

## **V INTELLECTUAL PROPERTY AND DATA PROTECTION**

Jersey has had data protection legislation since 2005. Following the introduction of the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED), Jersey brought in two pieces of legislation to ensure that the Jersey data protection regime maintains equivalence with the EU data protection laws. The legislation is:

- a* the Data Protection (Jersey) Law 2018 (DPJL); and
- b* the Data Protection Authority (Jersey) Law 2018 (DPAJL).

The DPJL deals with duties of data controllers (including the data protection principles), duties of data processors, conditions for processing, obligations to appoint data protection officers, rights of data subjects, exemptions to parts of the law, cross-border transfers and exemptions to the adequacy requirements and remedies and enforcement. Although largely consistent with the GDPR, there are some differences, for example, the period for complying with data subject rights requests is four weeks rather than one month (as is the case in the GDPR) and the right of further extension is eight weeks rather than two months (as is the case in the GDPR).

The DPAJL establishes the data protection authority in Jersey, and includes powers allowing it to investigate complaints and undertake inquiries along with granting it powers of sanction following a finding of a breach (including fines).

## **VI YEAR IN REVIEW**

The key development in Jersey affecting fintech in 2018 has been the progress made on the regulation of STOs and ICOs. In July 2018, guidance from the JFSC was published on

its approach to the regulation of ICOs, and in October 2018 a new application form was published to allow potential ICO issuers to apply for the relevant consents required under COBO.

This year, Jersey also introduced new legislation to revamp its regime relating to limited liability partnerships (LLPs), which came in force on 1 August 2018. The government is also looking to introduce a new legal entity to Jersey's repertoire, the limited liability company (LLC).

LLPs have been a feature of Jersey law for some time, but the new law will make the vehicle more attractive to businesses that are considering basing themselves in Jersey. Some of the key changes are:

- a* members can now contribute 'capital, effort and skill', whereas previously they were required to contribute 'effort and skill'. This means that business founders can now go into partnership with investors who will provide the necessary capital, without having to get involved in the day-to-day running of the partnership; and
- b* under the old Jersey LLP law, LLPs had to make an annual statement confirming that they were solvent and could pay their debts as they fell due. Currently, an LLP only has to make such a statement if a member is planning to make a withdrawal of partnership capital.

LLCs are popular in the United States, and now Jersey is planning to introduce its own version of the vehicle. LLCs are often described as a hybrid between a company and a partnership; unlike a traditional company, the Jersey LLC is governed by an LLC agreement that the members are largely free to agree among themselves.

Under current proposals, the Jersey LLC is likely to share some important features with its US counterparts. Most notably it will have the ability to create series, each with its own separate legal personality, giving businesses the ability to ring fence certain projects if they wish. Perhaps most importantly in the US-centric world of the technology sector, the LLC will provide a vehicle that potential partners or investors based in the United States will know and understand.

## **VII OUTLOOK AND CONCLUSIONS**

The willingness of the JFSC to set out a pathway for Jersey to become an important centre for launching STOs, ICOs and virtual currency exchanges, combined with previous pro-fintech developments (such as the introduction of the regulatory sandbox for digital currency exchanges), has continued Jersey's development as a pro-fintech jurisdiction.

Jersey's growing appeal as a technology friendly jurisdiction has been underlined by Binance, the world's largest cryptocurrency exchanger, establishing itself in Jersey in 2018. This adds to Jersey's already impressive credentials as a pro-fintech jurisdiction with Global Advisors, a leading crypto fund manager, and SoftBank, the world's largest technology fund, already based in Jersey.

The introduction of LLPs and LLCs further enhances Jersey's appeal as a jurisdiction that offers flexibility in the choice of structuring options available to technology businesses, while also offering a regulatory regime that is globally respected. The outlook for Jersey's technology sector is undoubtedly bright.

## ABOUT THE AUTHORS

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Dilmun Leach, group partner at Collas Crill LLP, is a funds, corporate and regulatory lawyer based in Jersey.

His funds practice includes acting on the launch of investment funds and their satellite vehicles, including co-investment and carry vehicles, advising on the Jersey AIFMD regime, and the establishment and licencing of Jersey managers. Dilmun has experience of working with fund managers investing in a variety of asset classes including debt and CLOs, private equity, real estate, infrastructure, oil and gas and virtual currencies.

Dilmun's corporate practice includes mergers and acquisitions, initial public offerings, schemes of arrangement, establishing investment vehicles to acquire a range of assets including infrastructure and real estate, and group restructurings.

His regulatory practice includes advising on marketing funds and other financial products into Jersey, change of control advice and applications to the Jersey regulator, and the launch of innovative new products including crowdfunding platforms, debt issuance vehicles and products involving virtual currencies and tokens.

Dilmun is actively involved in the Jersey finance industry, including responding to industry consultations, for example on LLCs and the Jersey private fund regime. He is a committee member of the Jersey Funds Association, a member of a working group reviewing the Jersey limited partnership law and a member of the Jersey Association of Directors.

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