



# Global Legal Insights Fintech 2024: Jersey chapter

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## Approaches and developments

### Fintech initiatives in Jersey

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Financial technology is already well established in Jersey, and firms are embedding technological solutions which enhance their products and services, increase efficiencies, and provide greater transparency.

With its digital environment, Jersey is an attractive location for both innovative start-ups and established businesses, and there is a thriving fintech cluster, providing opportunities for partnerships, knowledge sharing and innovation. There is a growing skills base and, building on the work of Jersey's Digital Academy (a dedicated facility working with leading industry partners and education providers to offer a wide range of full-time and part-time digital courses, workshops and events), there will be further investment in training and attracting talent which aligns with Jersey's needs.

The "Jersey for Fintech" initiative is a collaboration between the Government of Jersey, Jersey Finance and Locate Jersey, with a view to promoting Jersey as the ideal location for fintech firms to establish, grow and thrive. The aspiration is for Jersey to be the easiest international finance centre to do business within a digital world.

### Jersey Financial Services Commission's approach to Fintech and crypto

The Jersey government and the regulator (the Jersey Financial Services Commission or "**JFSC**") are receptive to the adoption of financial/regulatory technology and digital solutions and the virtual assets industry and welcome such businesses establishing themselves in Jersey. Jersey has not introduced virtual asset-specific legislation but instead treats virtual assets as another asset class and regulates virtual asset

[<sup>1</sup>] business within Jersey's existing financial services legislation and the anti-money laundering, counter-terrorist financing, and counter-proliferation financing ("**AML/CFT/CPF**") regime (further detail below).

The Innovation Hub of the JFSC is a strategic initiative which supports innovation in financial services. It is designed to facilitate communication and collaboration between our industry stakeholders and the wider JFSC. In its 2023 annual innovation report, the Innovation Hub cites its goals as being to drive the

adoption of regtech solutions by industry and support the development of the Island's virtual asset service provider ("**VASP**") sector.

The JFSC is a member of the Global Financial Innovation Network ("**GFIN**"), a network of international regulators and related organisations committed to supporting financial innovation. The Innovation Hub was elected to the Coordination Group (the managing committee) of the GFIN in 2023, which is hoped will allow the JFSC to drive activity, share best practice and explore the impact of innovative technology with a network of international regulators during its four-year tenure.

## Overview of recent regulatory developments

Anti-money laundering ("**AML**") supervision of VASPs: virtual currency exchange ("**VCE**") businesses operating in or from within Jersey have been required to register and/or notify the JFSC of their activities since 2016. In 2023, the scope of the Proceeds of Crime (Jersey) Law 1999 ("**POCL**") was extended to replace the VCE definition with a new definition of a VASP. As a result, VASPs are within scope of Jersey's AML regime, bringing in registration requirements for VASPs (further details below at Key regulations and regulatory approaches), unless an exemption/exclusion applies.

Introduction of VASP register: in line with recommendations from the Financial Action Task Force ("**FATF**") and to support the adoption of the Travel Rule (see below), the JFSC published a list of registered VASPs on its website in May 2024. The list shows all VASPs registered with the JFSC for the purposes of the POCL, as noted above. There are now (as of August 2024) 10 registered VASPs in Jersey.

Proactive implementation of the travel rule:

1. The travel rule requires financial institutions, including those dealing with virtual assets, to share specific information about the parties involved in a transaction that exceeds the minimum threshold (of €1,000 or \$1,000) when transferring funds electronically.
2. The travel rule was established by FATF Recommendation 16, which is an international regulatory standard designed to combat financial crimes like money laundering and terrorism financing.
3. Jersey proactively implemented the travel rule into its regulations ahead of the EU's timeline by amending legislation in September 2023 to expand the definition of "payment service provider" to include VASPs, when:  
the person is carrying out payment services in or from within Jersey; or  
being a legal person established under Jersey law, the person is carrying out payment services in any other part of the world.
4. Tokenisation of Real-World Assets ("**RWAs**"): there is a growing interest in tokenisation of RWAs or when rights to RWAs are recorded on the blockchain. In 2024, Walkers' Jersey team has advised on the launch of Jersey's first tokenisation platform, in a watershed moment for Jersey's fintech offering. The Walkers team advised on all legal and regulatory aspects in forming the Jersey issuer of tokenised assets, including procuring approval from the JFSC for this novel platform. The Jersey issuer issues tokenised structured products that track the value of underlying real-world assets, including listed stocks and ETFs.
5. Consultation on smart contracts: in March 2024, the Jersey Law Commission published a scoping consultation paper on, inter alia, the enforceability of smart contracts in Jersey; whether Jersey

needs to recognise the concept of decentralised autonomous organisations as a vehicle offered under Jersey law; and whether Jersey should also consider recognising a new category of personal property rights similar to the “data object” proposed by the Law Commission in England and Wales. The scoping consultation closed in June 2024 and further consultation is expected around provisional findings and recommendations.

The JFSC is currently reviewing the ICO Guidance Note and an updated draft version is expected to be published in the second half of 2024 for consultation and comments. Additionally, the JFSC is also developing separate guidance and an application form for the tokenisation of RWAs which is also expected in the second half of 2024.

### **Fintech offering in your jurisdiction**

Recent years have seen a substantial increase in fintech activity in Jersey. Jersey is at the forefront of funds, banking, private wealth and capital markets, and the Island was quick to recognise the opportunities presented by fintech and has worked hard to develop an attractive proposition for innovative start-ups and established businesses alike.[ii] There is a substantial number of fintech companies operating in Jersey across varied sectors, providing services including integrated payments and compliance solutions for regulatory companies delivering complex compliance tasks through automated workflows. The number of registered VASPs in Jersey, relative to the size of the jurisdiction, is substantial and we expect this growth trend to continue.

### **Regulatory and insurance technology**

Regulatory technology (or “regtech”) is openly supported by the JFSC. The Innovation Hub of the JFSC has an objective to advocate for industry adoption of regtech. The Hub provides regulatory guidance around adoption and are involved in several initiatives to reduce the barriers to adoption, firms to interrogate, assess, understand and document limitations of regtech they use and to document the mitigation measures they have put in place to manage risk. The JFSC has published guidance[iii] for users of regtech with a view to supporting firms in increasing their capacity and continuing to drive high standards in compliance, whilst also meeting regulatory requirements. In this context, there is a growing number of providers of regtech solutions in Jersey, predominantly offering digital solutions to client onboarding and identity verification.

### **Regulatory bodies**

The JFSC is the financial services regulator in Jersey responsible for the authorisation and supervision of financial services providers. The JFSC supervises registered persons from a prudential and conduct of business perspective.

The Jersey Office of the Information Commissioner is the Jersey data protection authority.

### **Key regulations and regulatory approaches**

Fintech firms must look to existing regulatory regimes that may be applicable to their business on a case-by-case basis. In addition to the key regulatory frameworks outlined below, fintech firms may also need

to comply with data privacy laws, the economic substance regime (see Restrictions for further detail), consumer protection legislation (expected to be introduced in Jersey in the next year) and regulatory guidance.

## Registration of VASPs under the POCL

Under Schedule 2 of the POCL, carrying on one or more of the following activities or operations by way of business in or from within Jersey could trigger the need for registration with the JFSC for AML supervision and oversight:

1. exchange between virtual assets and fiat currencies;
2. exchange between one or more forms of virtual assets;
3. transfer of virtual assets;
4. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
5. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

## VASP Activity or activities

The registration requirement arises under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (“**SBJL**”). Under the SBJL, any person who carries on (or holds itself out as carrying on) VASP Activity as a business for or on behalf of another person in or from within Jersey is required to be registered as a VASP with the JFSC, unless an exemption or exclusion applies.

## Exemptions/exclusions

The VASP registration requirement will not be triggered where one of the following exemptions/exclusions applies:

- **VASP Activity carried out solely on their own behalf:** the requirement to carry out VASP Activity for or on behalf of another person refers to another natural or legal person or legal arrangement. [iv] If the VASP Activity is not being performed for or on behalf of another person, then it will not be considered a VASP Activity or operation and so would be excluded. For example, a person undertaking the activity of exchange between virtual assets and fiat currency, and solely on their own behalf, would not be doing so for another person.
- **Outside Jersey:** under the POCL, if the VASP Activity is carried on by a non-Jersey person and not carried out in or from within Jersey (and such person does not hold itself out as carrying on such business in or from within Jersey), then it will be excluded from the scope of the VASP registration requirement.

The JFSC has issued guidance on what constitutes “in or from within Jersey” in this context, and this guidance states that in or from within Jersey may include (but is not limited to):

- for a non-Jersey entity, where:
  - the entity is managed and controlled from Jersey;
  - the entity has a physical presence in Jersey (i.e. office space); or

the entity has employees or agents operating in Jersey (operating in this sense means employees or agents are located in Jersey with some degree of permanence and undertaking their VASP Activities from within Jersey); and

- for a non-Jersey individual, where the individual has some degree of permanence in Jersey (permanence in this sense means they have a fixed/service office from which they work when in Jersey, such office being taken in their own name for the purpose of their business activities).

For the purposes of in or from within Jersey, VASP Activities provided solely by a non-Jersey person from outside Jersey as a result of marketing or soliciting in Jersey or specifically targeting Jersey, is not treated as business carried on in or from within Jersey.

Note that there are no express exemptions or exclusions available based on the activity being in response to a reverse enquiry.

### **Licensing/registration**

A person who wishes to register as a VASP is required to apply to the JFSC to undertake such business (using an online application form)<sup>[V]</sup> and pay an application fee for registration (as well as annual fees). Often, a VASP will appoint an Anti-Money Laundering Service Provider (“**AMLSP**”) to make this registration on its behalf.

The JFSC updates its fees regularly and they can be found in the JFSC fees notice on its website. There are no published timeframes for processing applications, however, we suggest allowing at least five to 10 working days (with additional time depending on JFSC’s capacity and the complexity of the application).

Applicants will be required to provide certain information as part of their application including the names, addresses and certified copies of passports of individuals (including the VASP’s directors, MLRO, MLCO), details of the VASP activities the entity is registering for, specific details about the exact nature of the business, structure charts, a business risk assessment, details about the applicant’s AML/CFT/CPF policies and procedures, and details about employee training,

### **Obligations and requirements**

VASPs are required to comply with the requirements of legislation and guidance within Jersey’s AML regime (which includes the POCL, the SBJL, the Money Laundering (Jersey) Order 2008 (“**MLO**”) and the JFSC’s AML Handbook

The JFSC requires a VASP to report on its obligations, operations and business activities with regard to the provision of a VASP Activity.

### **Financial Services (Jersey) Law 1998 (“FSJL”)**

Under the FSJL, a person shall not carry on, or hold itself out as carrying on, Financial Service Business<sup>[vi]</sup> in or from within Jersey unless the person is registered or an exemption/exclusion applies.

A business involving virtual assets may be required to obtain a registration under the FSJL where its activities amount to the carrying on of Financial Service Business. This will need to be considered on a case-by-case basis. For example:

1. crypto custodians or other service providers to Collective Investment Funds may require a fund services business licence;
2. a money service business licence may be required for a virtual currency exchange business or payment provider; and
3. an investment business licence may be needed where the virtual asset is an “investment” (as this term is defined under Schedule 1 of the FSJL which includes shares, debentures, futures, contracts for difference, financial derivatives, rights and interests in investments, among other things).

Legal advice is likely to be required, tailored to the specific applicable circumstances.

### **Exemptions/exclusions**

There are a large number of exemptions from the requirement to register under the FSJL which may be applicable, or need to be considered, depending on the type of Financial Services Business being carried on, but these are not specific to virtual assets. For example:

1. (in the context of investment business only): an exemption (known as the “**Overseas Person Exemption**”) from the registration requirements may be available for an overseas person (i.e. a person who is not a Jersey company and who has no place of business in Jersey from which it carries on business in or from within Jersey). This exemption means that the FSJL registration requirement shall not apply to an overseas person when:
  - carrying out a “specified transaction”;<sup>[vii]</sup>
  - it receives an unsolicited approach made by a person in Jersey to the overseas person; or
  - it complies with certain advertising requirements (see under Additional Considerations below) and either receives an approach from a person in Jersey or approaches a person in Jersey in compliance with those advertising requirements.
2. **Outside Jersey:** Under the FSJL if the Financial Services Business is not carried out in or from within Jersey and is instead carried out by a person who is not incorporated or established in Jersey (and does not hold itself out as carrying on such business in or from within Jersey) then it will be excluded from the scope of the FSJL registration requirement. The guidance issued by the JFSC in relation to the interpretation of in or from within Jersey referred to above in the context of the VASP registration requirement is likely to be persuasive, particularly as the same formulation of wording is used in the FSJL.

Each exemption should be considered on a case-by-case basis and specific legal advice is likely to be required, tailored to the specific applicable circumstances.

### **Licensing/registration**

A person who wishes to register to conduct one or more of the different types of Financial Service Business is required to apply to the JFSC. There are different application forms applicable for each of the different types of Financial Service Business registrations. The application and ongoing fees vary according to the type of registration sought and further details can be obtained from the JFSC's website (<https://www.jerseyfsc.org/industry/fees/>). The published application timescales also vary depending on the type of application, ranging from three to 30 working days.

## Obligations and requirements

There are bespoke requirements applicable to each of the different Financial Service Business applications, and on an ongoing basis thereafter (including the amount of regulatory capital which is required to be held and the various consent/notification requirements, as well as the requirement to comply with Jersey's AML regime). There are also certain local presence requirements, which vary depending on the type of Financial Service Business (for example, a number of types of Financial Services Business have a requirement to have at least two Jersey resident directors (e.g. fund services business) and to have a Jersey resident MLRO and MLCO). Further information on the obligations and requirements is set out in the Codes of Practice<sup>[viii]</sup> published by the JFSC which relate to each of the different types of Financial Service Business.

## Guidance

The JFSC has also published various guidance documents and policies which may also apply to entities, depending on the type of Financial Service Business they are carrying on, including:

- ICO Guidance Note (see below for further detail);
- Guidance Note: Securities Issues by Jersey Companies;<sup>[ix]</sup> and
- Sound Business Practice Policy (see below under Restrictions).
- Legal advice should be sought as to whether any particular guidance is applicable.

## Initial Coin Offerings (“ICOs”) and Token Issuer Registration Requirement

The issuance of virtual currencies and tokens by a Jersey incorporated company requires a consent to be obtained from the Jersey Registrar of Companies under the COBO (a “**COBO Consent**”). The ICO Guidance Note,<sup>[x]</sup> which sets out the general requirements applicable, distinguishes between Security Tokens and Non-Security Tokens, although a COBO Consent is required prior to issuing either type of token. In addition, an information memorandum (or whitepaper) which complies with certain content requirements under the Companies (Jersey) Law 1991 and related legislation will be required to be filed with the JFSC and a further consent (known as a “**CGPO Consent**”) may need to be issued by the JFSC in this regard.

For clarity, under the ICO Guidance Note, a virtual currency/token that is considered to be a security will be a Security Token and would typically have characteristics usually associated with an equity or debt security in the traditional capital markets sense, including one or more of the following such characteristics (whether contractual or implied):

1. a right to participate in the profits/earnings of the ICO issuer or a related entity;

2. a claim on the issuer or a related party's assets;
3. a general commitment from the ICO issuer to redeem tokens in the future;
4. a right to participate in the operation or management of the ICO issuer or a related party; and
5. expectation of a return on the amount paid for the tokens.

A Non-Security Token will typically be either:

1. a **utility token**: this confers on the holder merely a usage right or the right to access a product or service. Such a token has no economic rights attached to it, there is no expectation of a return; or
2. a **cryptocurrency token**: this is designed to behave like a currency, being a store of value and medium of exchange and referred to in some jurisdictions as a payment token.

With respect to stablecoins, the ICO Guidance note does not explicitly refer to these. We anticipate that the JFSC would refer to FATF Guidance (see para. 54) which states that “*a stablecoin is covered by the Standards as either a VA or a financial asset (e.g. a security) according to the same criteria used for any other kind of digital asset, depending on its exact nature and the regulatory regime in a country*” and so would assess the position on a case-by-case basis. Accordingly, we anticipate that stablecoins could either be classified as a Security Token or a cryptocurrency token, depending on the application presented.

## **Exemptions/exclusions**

There are no explicit exemptions/exclusions but the JFSC may consider relaxing certain conditions for issuance of Non-Security Tokens in certain circumstances, with all applications being treated on a case-by-case basis. For example, where a token is a Non-Security Token an applicant may be able to seek a derogation from the requirement for the information memorandum/whitepaper to comply with certain content requirements which are applicable where a prospectus is issued by a company under the Companies (Jersey) Law 1991.

## **Licensing/registration**

An application is made for a COBO Consent and, where applicable, a CGPO Consent by completing an application form entitled “Checklist for: Token Issues by Jersey Companies”. The fee payable is the applicable incorporation fee, which varies according to how quickly the Jersey Registrar of Companies is asked to process the application. The time taken to process the application varies accordingly to the complexity of the application and workload, but we suggest allowing six weeks, although applications may take longer depending on the number of queries raised.

## **Obligations and requirements**

Prior JFSC consent must be obtained for any material changes to the information provided in the application.

In addition to making the application referred to above, careful consideration will need to be given as to whether any other registration or licences should be sought, including registration under Schedule 2 of



the POCL (whether as a VASP and/or for another type of activity), or for Financial Services Business under the FSJL.

## **Guidance**

Please see the ICO Guidance Note

## **Restrictions**

For those looking to establish or operate a fintech/digital assets business in Jersey, the following additional considerations should be borne in mind:

### **The JFSC's Sound Business Practice Policy ("SBPP")**

The purpose of the SBPP is to protect Jersey's reputation as a financial services jurisdiction. Accordingly, the SBPP sets out activities which the JFSC considers higher risk and which are subject to greater scrutiny from the JFSC. The JFSC treats involvement by a Jersey company in token issuances or crypto exchanges or providing services relating to cryptocurrencies as a higher risk activity. The consequences of this are that the JFSC exercises scrutiny on such activities, and focuses on AML/CFT/CPF processes, background, and quality of the owners of the business/the promoter.

## **Economic substance**

Jersey, in common with other offshore jurisdictions, has passed legislation and issued guidance to ensure that companies which are tax resident in Jersey and are carrying out a "relevant activity" in certain "relevant sectors" (which generates "gross income" for that entity) have adequate 'substance' in Jersey. For example, the adequate substance requirements for a company will generally require that the entity is directed and managed in Jersey, has an adequate number of employees proportionate to the level of activity carried on in Jersey, has an adequate physical presence in Jersey, and conducts core income generating activity ("**CIGA**") in Jersey. The relevant sectors are: (pure equity) holding company; banking; finance and leasing; fund management; insurance; distribution and service centre; headquartering; shipping; and intellectual property company. Whether an entity is carrying on a relevant activity in the above sectors will need to be examined carefully on a case-by-case basis and specialist advice should be sought.

## **Business licence**

To the extent that a firm has a place of business/physical presence from which it carries on business in Jersey (e.g. having employees and/or occupying office space in Jersey), a business licence may be required under the Control of Housing and Work (Jersey) Law 2012.

## **Cross-border business**

Jersey is a leading international finance centre and attracts businesses and start-ups alike worldwide. Jersey's activity in the virtual assets space is growing and the Island now has an established approach for considering applications involving token-generating events and is very much open for business.

The work of Jersey for Fintech is supported by the JFSC, which is promoting digitalisation as one of its three strategic anchors, and is working with industry and regulators in other jurisdictions to support the growth of regtech. Digital Jersey (a Government established agency) supports local digital businesses in exporting their goods and services, and promotes Jersey as a location of choice for companies from overseas.

Jersey is a well regulated jurisdiction with huge digital growth ambitions, supported by the Government and other authorities.

## Endnotes

[i] Defined under Jersey law as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.

[ii] Source: <https://www.digital.je/our-work/jersey-for-fintech/>

[iii] Can be found here: Regulatory technology implementation guide — Jersey Financial Services Commission ( <https://www.jerseyfsc.org/> )

[iv] Note – the term “legal arrangements” is explained at paragraph 3.4 of the POCL Guidelines on Interpretation <https://www.jerseyfsc.org/media/6447/guidelines-on-interpretation-of-article-36.pdf>

[v] <https://www.jerseyfsc.org/industry/sectors/schedule-2-forms/>

[vi] Under the FSJL a person carries on Financial Service Business if, by way of business the person carries on: (i) investment business, (ii) trust company business, (iii) general insurance mediation business, (iv) money service business, (v) fund services business, or (vi) AIF services business and, unless an exemption is applicable, will be required to obtain a registration permitting it to carry on this type of business. These different types of Financial Services Business are defined at Article 1 of the FSJL.

[vii] ‘Specified Transaction’ means a transaction amounting to investment business by virtue of which an overseas person: (a) deals with a person in Jersey; (b) acts as an agent for a person in Jersey; (c) carries out discretionary management activities for a person in Jersey; or (d) provides advice to a person in Jersey.

[viii] Available [here](#).

[ix] Available [here](#).

[x] Refers to the document ‘Guidance Note: The Application Process for Issuers of Initial Coin Offerings (ICOs)’ published by the JFSC, and can be found [here](#).