

The Legal 500 Country
Comparative Guides
Jersey: Fintech



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What are the sources of payments law in your jurisdiction?

The principal sources of payments law in Jersey include:

- Financial Services (Jersey) Law 1998 (the "FSJL");
- Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007 (the "MSB Order");
- EU Legislation (Payment Services – SEPA) (Jersey) Regulations 2015 (the "SEPA Regulations")(as amended); and
- Community Provisions (Wire Transfers) (Jersey) Regulations 2007 (as amended).

The European Payment Services Directive ("PSD"¹) and European Payment Services Directive II ("PSD2"²) do not apply directly in Jersey as Jersey is not a member of the EU. However, generally banking institutions in Jersey are part of wider banking groups to which PSD and PSD2 do apply and therefore in practice voluntarily operate at a higher standard.

Jersey has however adopted the SEPA Regulations to ensure its laws regarding Euro payments and payments services in Euros closely align with that of the EU, in particular with elements of the PSD/PSD2.

Can payment services be provided by non-banks, and if so on what conditions?

Yes, non-banks can provide payment services. In Jersey the FSJL classifies this as "money services business". Money services business ("MSB") is defined by Article 2(9) of the FSJL and is where a person carries on the business of:

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

The above relates to fiat money and payments rather than cryptocurrencies.

The MSB Order contains a number of exemptions where certain services will not constitute MSB, including whether a person is registered under the Banking Business (Jersey) Law 1991, or if the person's turnover is less than the specified amount (currently less than £300,000). Persons carrying out MSB and for which there are no available exemptions are required to apply for registration under the FSJL. Once registered, the persons have a continuing responsibility to adhere to the Jersey Financial Services Commission's (the "JFSC" (the Jersey regulator)) FSJL Code of Practice For Money Service (last revised on 1 June 2019).

What are the most popular payment methods and payment instruments in your jurisdiction?

The most popular payment methods and payment instruments in Jersey are: BACS³ schemes: BACS direct debits; and BACS Direct credit scheme; Faster Payments Service; CHAPS payments; SEPA payments; and Cheques.

Whilst not a payment method, we note for completeness that SWIFT messaging is used for communications in relation to payments.

GBP is the main currency of payments and so BACS, CHAPS and Faster Payments are used more frequently than SEPA payments.

What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

As stated above, open banking is not mandated by law in Jersey as PSD and PSD2 have not been adopted in their entirety notwithstanding that elements have been incorporated in the SEPA Regulations in relation to Euro payments and payment services.

A watching brief is being maintained in Jersey on how the UK and its banks and financial institutions respond to open banking. The Jersey response is likely, to some extent, to be a reaction to the success or limitations experienced on the UK mainland. As noted above, many banks in Jersey are part of larger banking groups and may choose voluntarily to operate to the higher standard and observe open banking practices for commercial or operational reasons.

How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

Personal data is critical to the economy of Jersey which has a strong finance industry that holds and processes large amounts of personal data in connection therewith. Whilst Jersey is not a member of the EU, a large proportion of the personal data processed in Jersey relates to EU citizens. Jersey has taken care to ensure its data protection regime provides a standard of protection for personal data equivalent to those in force within the EU and has enacted legislation to mirror the enhanced requirements of the European Data Protection Directive ("GDPR")⁴.

Jersey has enacted the Data Protection Authority (Jersey) Law 2018 and the Data Protection (Jersey) Law 2018 (the "DPJL"). The DPJL places a number of restrictions on the provisions of financial services by setting standards for data processing (i.e. by banks and financial institutions), and giving certain rights to data subjects (i.e. bank customers) over their information which is held and processed. This limits the types of products offered to customers (including as to their terms and conditions), limits the ability of financial institutions to market to customers and places restrictions on the back office and administrative operations of financial institutions. Whilst there is an overlap with PSD and PSD2, this is only to the extent that banks and financial institutions in Jersey choose to operate at the higher PSD/PSD2 compliant standard (as any data transferred as a result of PSD/PSD2 will also be subject to the provisions of GDPR and the data protection regime). PSD and particularly PSD2, if fully adopted in Jersey, would have a significant impact on the provision of financial services both operationally (in terms of technological infrastructure) and commercially in terms of payments and information services offered. Not unsurprising given the intention of the legislation was to stimulate competition and innovation for payment services through, among other things, data sharing. Jersey will not, however, be alone in being affected by this legislation (even if not enshrined fully into Jersey law) as open banking will impact the provision of financial services beyond Jersey.

What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

Jersey recognised cryptocurrencies as a separate asset class long before the "ICO Craze" of 2017 when the island's regulator, the JFSC, licensed the world's first Bitcoin-focused regulated fund (GABI Plc). In terms of testing products and services, the JFSC has proven itself to be a pro-active and forward-thinking regulator. The JFSC is a member of the Global Fintech Innovation Network (a group of international regulators and observers committed to supporting innovative products and services) and participates in the cross-border testing pilot, which launched in January 2019, offering firms the opportunity to test their products and services in multiple jurisdictions. Jersey also strives to promote fintech development by supporting local fintech talent through a government-backed economic development agency and industry association dedicated to the growth of the digital sector, Digital Jersey. Jersey also operates a sandbox run through Digital Jersey, supporting local fintech firms and fintech firms seeking to relocate to Jersey. For completeness, we note that the window for applications to participate in the January 2020 pilot has now closed. In terms of promoting fintech and thought-leading in Jersey, the Digital Assets Working Group (the "DAWG") works hard to raise awareness and interest in Jersey. Combining representatives of the States of Jersey, representatives of the JFSC and other interest groups on the Island, the DAWG is a group of individuals knowledgeable in the fintech space promoting digital assets and blockchain technologies in Jersey. Carey Olsen is a founder member of the DAWG and is an active participant and contributor.

Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

No, rather we see a growth in the fintech market and increased interest in fintech and credible fintech projects in Jersey. To date, Jersey has not needed to introduce blockchain-specific legislation because the prevalent fintech matters have not necessitated it. This means that Jersey has retained a degree of flexibility, which in turn will allow Jersey to adopt a pragmatic approach as the industry develops.

What tax incentives exist in your jurisdiction to encourage fintech investment?

Jersey is a low-tax jurisdiction and so there are no specific tax incentives for fintechs. There are currently no specific laws regulating the taxation of cryptocurrencies or digital assets, although Jersey's Comptroller of Taxes has issued guidance on cryptocurrency tax treatment regarding income tax and GST treatment. The guidance shows that such assets will be taxed in accordance with general Jersey taxation principles and provisions.

Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

Jersey has been attracting investment in a variety of areas of fintech. These can be grouped as follows:

- Initial Coin Offerings (“ICOs”);
- Security Token Offerings (“STOs”);
- non-security token issuances;
- Cryptocurrency Exchanges (Virtual Currency Exchange (“VCEs”));
- Security Token Exchanges;
- Custody of digital assets;
- Jersey funds investing in digital assets;
- Payment services; and
- E-ID.

Jersey has recently seen an influx of potential security token exchange platforms and Carey Olsen is working closely with credible promoters to advise on these matters.

Crucially, in Jersey, there is no requirement to have electronic clearing and settlement or for clearing of security tokens to be carried out by a clearing house or central depository which enables exchanges to provide on chain settlement. The JFSC have indicated that security token exchange businesses will be required to be regulated under the FSJL to undertake “investment business”. By comparison, VCEs benefit from lighter regulatory treatment.

If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

Jersey is a long established and well-regulated international finance centre boasting a host of industry experience and local expertise, making it an ideal jurisdiction for a fintech entrepreneur. Leveraging this existing expertise and the low-tax environment, Jersey, and Jersey vehicles, continue to be used in both established areas of finance and emerging areas. They are embracing fintech, primarily blockchain solutions (such as proptech, online settlement solutions e-ID and regtech, etc.), new areas of finance and other sectors as blockchain and DLT use cases are established.

To maintain its place as a respected, well-regulated international finance centre, Jersey is cognisant, and encouraging, of the advantages blockchain and DLT bring to Jersey's finance industry. To that end, Digital Jersey provides support to emerging fintech talent through the Digital Hub and by providing assistance to the scheme designed to assist entrepreneurs start businesses in Jersey – “Start Up Jersey”⁵. Digital Jersey also provides assistance with a scheme to enable existing businesses re-locate to Jersey – “Locate Jersey”⁶.

Jersey's regulator, the JFSC, has shown a considered and measured approach to fintech regulation to date, which should equip Jersey to be a leading fintech jurisdiction of the future by ensuring regulation in Jersey remains appropriate and commensurate to the product or service in question.

Entrepreneurs with credible fintech projects can contact us to know more about setting up a business in Jersey.

Access to talent is often cited as a key issue for fintechs – are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

As a small jurisdiction, Jersey has some residency and permit to work requirements and restrictions.

Immigration requirements

An immigration permission is not currently needed to live in Jersey for:

- a British citizen;
- a European Union (EU)/European Economic Area member;
- the holder of an EEA family permit; or
- a Swiss national.

Non EU/EEA nationals travelling to Jersey from abroad, may need a UK visa and may also be subject to certain requirements.

Work permit requirements

A permit to work in Jersey is not needed for:

- a British citizen or a British subject with the right of abode;
- a national of a member state of the EU/ European Economic Area (EEA), unless you are a Croatian national;
- a non-EEA family member of an EEA national but you must obtain an EEA family permit before entering Jersey;
- a Swiss national;
- a Commonwealth citizen admitted as a working holiday maker;
- a Commonwealth citizen admitted on the grounds of UK ancestry;
- a Commonwealth citizen with a certificate of entitlement to the right of abode;
- a participant in the Youth Mobility Scheme;
- a minister of religion;
- a business visitor; or
- a non EU / EEA passport holder who has no restrictions attached to your stay.

Residency requirements

Every person living in Jersey is given a residential status which determines where they can live and work. There are four categories: entitled; licenced; entitled for work; and registered.

Ordinarily a person has to live in Jersey continuously for 5 years and gain "Entitled for work" status before he/she can start a business or work in most jobs. A person has to live in Jersey continuously for 10 years and gain "Entitled" status to access the full real estate market. However, there are exceptions and Jersey welcomes applications from: Skilled, economically active, high net worth individuals; and High value activity businesses, and their principals, who are looking to move offshore. For these individuals, there are two routes that can be followed:

- **Business relocation:** this is for businesses which want to establish on the Island. This route gives the business principals (or essential employees) the option to apply for a 'licensed' permission. Individuals can then access the full residential market.
- **High value residency:** this route is income based and gives individuals 'entitled' status. Individuals gain full residential and employment rights subject to specific conditions.

More details and guidance can be found at: locatejersey@gov.je.

Jersey has its own EU Settlement Scheme to ensure that EU citizens who live in the Island are able to stay. The Jersey EU Settlement Scheme provides settled status to successful applicants who have been living in Jersey continuously for 5 years or more by 31 December 2020. This allows them to continue living and working in Jersey. They will also be able to apply for British nationality; pre-settled status to applicants who fulfil all the requirements of the application but have been living in Jersey for less than 5 years. This includes those who move to Jersey between the end of 2018 and 31 December 2020. After they have completed 5 years residence they can then apply for settled status; the ability for family members who are living with, or join, EU citizens in Jersey by 31 December 2020, to apply for settled status after 5 years in the Island; close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) the ability to join EU citizens in the Island (where the family relationship existed on 31 December 2020). At the time of writing, we understand that, EU citizens who arrive in Jersey 31 October 2019 will have to apply for settled status if they choose to stay in Jersey longer than 3 months.

If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

We are not aware of any proposed changes to the immigration policy in respect of the fintech industry at present. However, as set out at question 11, Jersey welcomes talented individuals. Separately, Jersey has built up a strong pool of blockchain expertise across the Island. There is now a wide group of talented individuals collaborating and advising in this area.

Certain companies, including certain company administration providers, now also offer 'incubation' services. These 'incubation' services are designed to assist new businesses in the fintech arena, when they are starting up in Jersey, by providing an on the ground presence and even assistance in providing key personnel for various roles for an initial period (for example MLRO, MLCO etc.). Carey Olsen would be happy to advise in relation to establishing a fintech operation on the island.

What protections can a fintech use in your jurisdiction to protect its intellectual property?

A fintech who is a proprietor of a patent, design or trademark can register these in Jersey. The Jersey patents, designs and trademarks registers are a secondary register to the United Kingdom register of patents, designs and trademarks, meaning that proprietors must first register their rights in the United Kingdom before doing the same in Jersey. Jersey is seeking to reform the laws governing registered intellectual property rights to enable Jersey to promote new business including those linked to e-commerce. The development of intellectual property law is thus a priority for economic development.

How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

The JFSC are a forward thinking and pragmatic regulator. To date, specific legislation has not been introduced to address cryptocurrencies as this has not been considered necessary.

The JFSC issued guidance on the interpretation of the various categories of digital assets and their corresponding treatment, entitled Guidance Note on the Application Process for Issuers of Initial Coin Offerings (the "JFSC Guidance"), this includes guidance on the treatment of cryptocurrencies. In short, the

JFSC Guidance outlines the three key areas of the JFSC's regulatory focus, being:

- the economic function and purpose of the cryptocurrency to be issued;
- its underlying purpose;
- and whether it is tradeable and transferable.

How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

Jersey has seen a large number of ICOs. This is in part because the JFSC recognised that ICOs with proper substance and backed by a credible promoter should be nurtured. As ICOs involve the issuance of a coin, consideration must be given as to whether such coin/token/asset constitutes a "security" under Jersey law, and therefore whether it falls within the existing regime regulating securities and their issuances. To assist with this analysis, the JFSC Guidance was issued. As set out at question 14, the JFSC Guidance outlines the three key areas of the JFSC's regulatory focus, being: the economic function and purpose of the digital assets to be issued; their underlying purpose; and whether they are tradeable and transferable. It has been confirmed that the JFSC Guidance has a wider application and can be used to inform how digital assets and, cryptocurrencies more generally, will be treated. Read the [JFSC Guidance](#).

Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

We are aware of numerous live Blockchain projects being undertaken in Jersey, many of which have been advised on by Carey Olsen (please see more details at question 9 above and 19 below).

To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

There is limited uptake of AI and machine learning in Jersey. We are aware of automation initiatives and developments in fintech, legal tech and regtech which will likely embed themselves in to the Jersey financial services industry in coming years. Factors affecting its further use in Jersey are likely to include:

- the uptake in other jurisdictions (such as the UK) affecting market practice in Jersey, particularly if adopted by large multinational groups such as banks or accounting practices;
- market pressures encouraging the adoption in Jersey to enable Jersey to stay competitive; and
- regulation and understanding of the risks associated with the technology and the management of those risks.

Regulation would impact uptake but it would depend on the terms of the regulation as to whether this would impede or encourage use.

Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

We are not aware of any insurtech initiatives specific to Jersey.

Are there any areas of fintech that are particularly strong in your jurisdiction?

Yes, Jersey has an exceptional pool of blockchain expertise developed from the JFSC's forward-thinking attitude, combined with Jersey's flexible range of corporate vehicles and favourable tax regime. As a result, Jersey is particularly strong at dealing with digital assets, whether that is the issuance of coins and tokens or the launch of exchanges. In particular, we at Carey Olsen have advised on the following:

ICOs/STOs/non-security token issuances

Jersey has seen a large number of ICOs. This is in part because the JFSC recognised that ICOs with proper substance and backed by a credible promoter should be nurtured. For example, Carey Olsen advised on the launch of Jersey's first ICO in December 2017, ARC Reserve Currency. ARC is an asset-backed "stablecoin" cryptocurrency which is designed to act like a currency without the volatility spikes one sees in other cryptocurrencies such as Bitcoin. Carey Olsen worked closely with the JFSC to ensure that the ARC coin launched ahead of time and with a degree of regulatory scrutiny that should give prospective purchasers a degree of comfort not available in other jurisdictions.

Subsequently, Carey Olsen built on its ICO expertise by advising on AX1 token, an ICO designed to raise capital for investment in a cryptocurrency mining operation based in the UK⁷.

Virtual Currency Exchanges ("VCEs")

Jersey has seen a number of VCEs launch from Jersey. This is, in part, due to the fact that the JFSC has brought the provision of VCE services in Jersey under Jersey's regulatory umbrella by extending the scope of existing laws and regulations. As a result, the Proceeds of Crime (Jersey) Law 2009 ("POCJL") requires VCEs to comply with the Island's laws, regulations, policies and procedures aimed at preventing and detecting money laundering and terrorist financing. As such, Jersey's VCE regulation balances the need to provide robust regulation with a desire to foster the development of the Island's burgeoning crypto-currency and digital asset credentials. Binance, the world's largest cryptocurrency exchange, established an exchange platform in Jersey.

Security Token Exchanges

Jersey has recently seen an influx of potential security token exchange platforms and Carey Olsen is working closely with credible promoters to advise on these matters.

The JFSC have indicated that security token exchange businesses will be required to be regulated under the FSJL to undertake "investment business".

Custody services and arrangements for holding digital assets

These services are closely related to the VCEs and security token exchanges that we have seen launch from Jersey, and concern the custody of the digital assets. There are two models: (i) custody services provided by the exchange itself (or a related entity) to investors and exchange users; or (ii) custody services outsourced to a third party custody provider to be provided to investors and exchange users. Early advice should be sought on this and Carey Olsen are experienced in this area.

Jersey Private Funds and Jersey Expert Funds

Jersey fund structures are used in the digital assets space. For example: CoinShares Fund I, a venture capital fund investing in Ether (a cryptocurrency used as a payment on the Ethereum blockchain platform) and Initial Coin Offerings.

Payments Services

Platforms relating to electronic payments.

E-ID

The use of electronic ID and verification techniques in Jersey and compliance with the Jersey AML regime. Generally, Jersey strives to promote fintech development by supporting local fintech talent. Digital Jersey, a government-backed economic development agency and industry association dedicated to the growth of the digital sector, aims to do this. Further, the JFSC is a member of the Global Fintech Innovation Network and participates in the cross-border testing pilot.

What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

The fintech projects we are currently seeing are not specifically designed to provide open banking solutions. In terms of payment services, the fintechs we advise are existing businesses expanding their offering into Jersey rather than providing banking services designed to directly compete with incumbent financial institutions. This is an area likely to develop in the coming years and the equilibrium of collaboration vs disruption will be subject to change.

To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development/innovation programmes?

We understand that Jersey banks are undertaking a number of fintech projects and innovation programmes. As mentioned above, several Jersey banks are part of larger banking groups, and many of these projects are being developed outside Jersey but will impact Jersey when the resultant products are launched. We would be happy to discuss the Jersey implications of any such fintech initiatives. Please do contact us using the details below.

Are there any strong examples of disruption through fintech in your jurisdiction?

No, there are none that we have seen disrupting the Jersey market as yet. As mentioned above, we understand that there are a number of fintech projects being undertaken (including as a response to PSD and PSD2) which will affect the Jersey market in time and disruption may well occur in coming years.

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Endnotes

1. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC
2. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EC and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.
3. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
4. www.startup.je
5. www.locatejersey.com
6. In the fintech space, the ICO terminology has now largely been superseded by reference to security and non-security tokens, a reflection of the evolving regulatory backdrop. We retain reference to ICOs in this article because we, Carey Olsen, have advised in relation to a number of ICOs and that was the terminology used at that time. The settled approach now is to determine whether a coin or token or other digital asset issued constitutes a security or not and therefore whether it is a "security token" or not.

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PLEASE NOTE

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

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