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Cayman Islands

FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Cayman Islands.

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CAYMAN ISLANDS
FINTECH

1. What are the sources of payments law in your jurisdiction?

The Cayman Islands doesn't have a separate legal framework for payments. The main sources of law are the:

- Electronic Transactions Act
- Monetary Authority Act
- Money Services Act
- Money Services Business Regulations and the
- Virtual Asset (Service Providers) Act

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

Yes. However, unless the payment service provider has a money services business licence or a banking licence, it must not:

(a) Provide any of the following services:

(i) money transmission;

(ii) cheque cashing;

(iii) currency exchange; or

(iv) the issuance, sale or redemption of money orders or traveller's cheques.

(b) At any point in time have custody/possession of the funds to be transferred;

(c) solely transmit transaction details or authorisation requests or transmit or initiate a payment order;

(d) have access to the payment account of the user. In other words, the payment transaction is not processed by the proposed entity via the online banking interface of the issuer, as would be the case for typical payment initiation service providers; and

(e) receive (other than from a bank or trust company) and hold on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise.

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

The Cayman Islands has a dual currency system with many businesses and individuals transacting in both the US Dollar and the Caymanian Dollar at a fixed exchange rate between the two currencies.

Traditional forms of payment like credit cards are very widely accepted within the jurisdiction. The presence of digital and mobile payment solutions is also notable. Platforms from mobile phone providers and other payment platforms offer a range of payment options, including bank transfers, virtual accounts and digital wallets.

4. 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?

Open banking and the use of application programming interfaces (**APIs**) is not mandated or prohibited under the law for banks in the Cayman Islands. Some banks do make use of APIs. However, other than e-wallets and the Class A Banks' automated clearing house, open banking is not yet widely used in practice in the Cayman Islands. Banks are regulated by the Cayman Islands Monetary Authority (**CIMA**) and banks typically require CIMA's consent in order to pursue open banking and / or the use of any APIs, prior to their introduction.

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

Cayman's Data Protection Act (**DPA**) came into full force in 2019. Drafted around a set of EU-style data protection principles to which data controllers must adhere, personal data must be collected in a fair and transparent manner and only used and disclosed for purposes properly understood and agreed to by data subjects. Any personal data collected must be adequate, kept up-to-date and should not be retained for longer than is necessary to fulfil the collection purpose.

The DPA aligns the Cayman Islands with other major jurisdictions around the world, notably the EU, and thereby facilitates the free flow of data – a prerequisite for the Cayman Islands being an equal and competitive participant in today's globalised economy. Importantly, the DPA provides a standard framework for both public and private entities in the management of the personal data they use. Internationally active organisations will find many similarities between the data protection law of the Cayman Islands and those of other jurisdictions where they are active. The DPA aims to reduce the administrative burden of operating internationally and cement the Cayman Islands as an attractive jurisdiction in line with international developments.

The Office of the Ombudsman is the Cayman Islands' supervisory authority for data protection.

6. 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?

As one of the foremost offshore financial centres, home to approximately 70% of the world's offshore investment funds and with an absence of any direct taxation on companies or individuals, the Cayman Islands has become an attractive destination for technology entrepreneurs. While much of Cayman's financial services legislation was written before the blockchain revolution began, the last few years have seen the Cayman Islands take a number of legal and regulatory steps to make the Islands a jurisdiction that will allow such innovation to thrive.

Framework legislation regulating virtual asset service providers came into force on 31 October 2020 and has already attracted a number of new entrants to the Cayman market. A technology-neutral regulatory sandbox is still awaited but when introduced it is hoped this will further attract companies operating in this fast-moving sector to establish themselves in Cayman.

First amongst the leading offshore jurisdictions, Cayman established a technology park within its existing special economic zone (**SEZ**) to allow technology companies to benefit from specific advantages, including zero-taxes and fast-tracked work permit applications for relocating employees.

New technologies have not yet displaced traditional financial service providers in Cayman. Cayman Finance, a group that represents Cayman's financial services sector, has established an innovation lab to engage with the financial services industry, regulators, the government and the media to promote the development and use of new technologies in the Islands.

Informal conversations have also started concerning a potential framework of laws, developed under Cayman Finance and CIMA that might direct new technologies towards the institutional market.

The Blockchain Association of the Cayman Islands was established to promote the use of blockchain-based solutions in the Cayman Islands, to facilitate collaboration in the space and to lobby to the government and regulators.

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

The pressures created by the COVID-19 outbreak on global trade systems highlighted the urgent need to maintain and strengthen the resilience of international supply chains. This resilience depends on trust, transparency and integrity, which can be improved through the responsible deployment of blockchain technologies. With applications to join the technology park within the SEZ at an all-time high, it is anticipated that Cayman will continue to benefit from technology companies looking to respond to this shift and establish themselves in a tax neutral jurisdiction.

However, increased pressure from proposed EU tax and regulatory reforms could impact Cayman's current flexibility in this space going forward. In particular, further changes to the economic substance requirements introduced in Cayman in 2019 could have an impact. However, Cayman is already benefiting from the regulatory uncertainty in the virtual assets sector in the USA which has seen a number of US projects relocate offshore. Cayman is geographically advantaged being in the same time zone as the USA.

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

The Cayman Islands is a tax-neutral jurisdiction. There is no income tax, wealth tax, profits tax, capital gains tax, payroll tax, social security contribution (aside from mandatory pension contributions for employers and their employees) or corporate tax in the Cayman Islands. A registered Cayman Islands entity is not subject to any direct taxes.

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

As one of the pre-eminent offshore financial centres investors and financial institutions are very familiar with Cayman Islands entities. This, combined with Cayman's flexible business-orientated legislation and multitude of potential issuer vehicle types, has made the Cayman Islands a popular domicile for fintech companies looking to raise funds and access the international capital markets. In the past 12 months a number of Cayman registered AI, Web3 and digital payment solution start-ups have successfully closed Series A and Series B funding rounds, led by angel investors and venture capital firms. More mature Cayman-based fintech and blockchain companies have successfully completed later funding rounds and strategic acquisitions as they continue to expand their businesses.

Cayman is also proving a popular destination for decentralised finance (DeFi) protocols, and, has seen a sharp increase in awareness and understanding among corporate service providers who cater for entities registered in Cayman and who utilise DeFi protocols.

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

The Cayman Islands is a tax-neutral jurisdiction. A registered Cayman Islands entity is not subject to any direct taxes.

The Cayman Islands government has established the SEZ, which enables technology companies from outside Cayman to easily and cost-effectively set up and operate offshore with a genuine physical presence. Benefits of being a resident in the SEZ include:

- No corporate, income, sales or capital gains tax;
- Fast-track set up in four to six weeks;
- Renewable five-year work/residency visas granted in five days for staff from outside the Cayman Islands;
- No government reporting or filing requirements; and
- Presence in a tech cluster with cross-marketing opportunities.

The Cayman Islands has long been committed to implementing best international practices and is compliant with the anti-money laundering and anti-terrorist financing requirements of the OECD and Financial Action Task Force (**FATF**). As a member of the Caribbean FATF, the Cayman Islands implements recommendations promulgated by the FATF.

The Electronic Transactions Act (**ETA**) puts electronic signatures on an equal footing with wet ink signatures in the Cayman Islands. Technologically neutral, the ETA was established to promote public confidence in the validity, integrity and reliability of conducting transactions electronically and recognises electronic records as records created, stored, generated, received or communicated by electronic means.

Cayman is also a popular choice for projects wishing to use a legal wrapper for their decentralised and community-driven projects. Combining the limited liability protections of a corporate entity with the flexibility of a trust, the Cayman foundation company provides decentralised autonomous (**DAO**) projects with a very user-friendly option.

11. 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?

All non-Caymanians employed in the private sector must have a work permit. An application for a full permit usually takes four to six weeks to process. A streamlined regime exists for certain types of businesses that can be set up within the SEZ.

Permit costs vary depending on the sector (financial services, tourism or construction), and the skill level of employees. The costs range from an annual minimum of KY$300 for unskilled workers to in excess of KY$30,000 for certain senior management and professional roles. Employers are responsible for work permit fees and these must not be passed on to employees.

Permits are ordinarily renewable for a maximum of nine years. An employee can make an application for permanent residency when he has been in the Islands for a continuous period of eight years, and these applications are determined under a points-based system which examines various economic and social criteria.

For most categories of employee, the employer must pay the premium under a health insurance contract issued by an approved insurer. However, the employer can recover up to 50% from the employee. Employers and eligible employees make mandatory contributions towards each employee's pension plan of 5% of the basic salary up to the maximum prescribed level of pensionable earnings.

12. 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?

As a market economy, the Cayman Islands responds to business demands. While the fintech industry does not have an influence on immigration policy Cayman's ambition to become a global technology hub is supported by a sound legal framework, a wealth of experienced professional service providers, modern infrastructure, state-of-the-art communication systems and a stable political climate.

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

The Cayman Islands is a common law jurisdiction that has a robust intellectual property protection regime.

Copyright

In 2017 the Cayman Islands updated its copyright laws to bring them in line with the most recent developments under the UK Copyright, Designs and Patents Act (as revised), which expressly includes computer programs and databases within the definition of "literary works" and therefore protects them as such for a duration of 50 years.

Open-source code is not separately regulated or protected in the Cayman Islands. It is possible for every contributor to the open-source code to own the copyright to their contribution, although in practice most contributors are likely to agree to license their material under the same licence as the original work.

Trade Marks

The main IP rights available to protect branding are registered and unregistered trade and service marks. Technology companies will generally own a combination of an established brand or trade name — and this can include logos or icons — protected as registered or unregistered trademarks.

Trade mark rights give registered owners the right to prevent others using identical or confusingly similar marks to their registered mark. Brand owners can also rely on unregistered trade mark rights through the law of passing off. This allows the owner to prevent others from damaging their goodwill with customers by using branding or get-up that is identical or confusingly similar to its own.

Patents

Patents and industrial designs registered in the UK or at the European level can also be protected in the Cayman Islands by extension with the Cayman Islands Register of Patents and Trademarks. In addition, the patent regime has been amended to provide innovators with additional protections against abusive challenges to their rights by entities that obtain patents for the sole purpose of taking legal action against those who innovate and develop new products. The Cayman Islands patent laws have been amended to prohibit bad faith infringement claims by so-called patent trolls.

Trade Secrets

Trade secrets are protected in the Cayman Islands through a combination of common law and rules of equity. A range of remedies are available where trade secrets have been improperly acquired, disclosed or used. Confidential information is protected through a contractual agreement to keep certain information confidential or through the common law obligation to keep information confidential, because of the nature of the relationship between the discloser and disclosee, the nature of the communication or the nature of the information itself.

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

In May 2020, a new legislative framework for regulating virtual asset businesses, the Virtual Asset (Service Providers) Act (**VASP Act**), was introduced in the Cayman Islands.

The VASP Act is intended to provide a flexible framework to promote the use of new technology and innovative enterprise in the Cayman Islands while complying with newly adopted international standards set by the FATF. The new legislation provides for the supervision of persons and entities facilitating virtual asset activities as a business.

The VASP Act defines virtual assets as "*a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include a digital representation of fiat currencies*". This wide definition captures all cryptocurrencies, security tokens, utility tokens or other digital assets that are tradeable or transferable, with the exception of digital fiat currencies. The "*digital expression of fiat currencies*" is not defined but is intended to apply only to government-issued virtual currencies as opposed to Tether or similar currency or asset backed tokens.

The VASP Act applies to any person providing "*virtual asset services*". Virtual asset services are defined as the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement:

(a) exchange between virtual assets and fiat currencies; (b) exchange between one or more other forms of convertible virtual assets; (c) transfer of virtual assets; (d) virtual asset custody service; or (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

The VASP Act only applies to persons that carry out virtual asset services as a business or in the course of a business for or on behalf of other persons.

The regulatory framework for the VASP Act is being implemented in two phases. Phase one focused on anti-money laundering and countering the financing of terrorism compliance, supervision and enforcement, and other key areas of risk. Under phase one, entities engaged in or wishing to engage in virtual asset services must have registered with CIMA under the VASP Act. When phase two of the VASP Act comes into effect (no date has yet been announced), as well as registering with CIMA, virtual asset custodial services and exchange or trading platforms will also need to apply to CIMA for a separate VASP licence.

In addition to the requirements of the VASP Act, the primary piece of legislation regarding securities and investment business in the Cayman Islands is the Securities Investment Business Act, as revised (**SIBA**). SIBA provides for the licensing and control of persons engaged in securities investment business in or from the Cayman Islands. Importantly, SIBA is essentially consumer protection legislation, designed to protect the investing public and to be construed broadly. When determining whether a business activity is caught by SIBA, therefore, the emphasis is on substance rather than form.

SIBA sets out an exhaustive list of financial instruments that constitute "*securities*". In 2020 SIBA was amended and the definition of securities also now includes virtual assets which can be sold, traded or exchanged immediately or at any time in the future that:

(a) represent or can be converted into any of the securities listed under SIBA, or (b) represent a derivative of any of the securities listed under SIBA.

Whether an asset could constitute a security under SIBA is a fact-specific enquiry dependent on the unique functionalities exhibited by the asset. If the asset qualifies as a security, the issuer will be either dealing in, or arranging deals in, securities, although the issuer's activities may fall within a list of excluded activities under SIBA.

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

Please see (14) above. While we expect the VASP Act to evolve in line with the latest FATF guidance, and phase two of the VASP Act is awaited, we do not anticipate any changes in the regulatory approach to virtual asset issuances from the Cayman Islands.

Where digital assets represent shares in a Cayman company, legal title to the underlying shares represented by the token will be determined (in the absence of fraud, manifest error, or other extraordinary circumstances) by reference to the company's register of members. A Cayman company's constitutional documents will usually oblige the company to treat the holder entered on the register of members as the sole person entitled to the shares, including any voting rights and dividend payments in respect thereof. In the authors' experience, issuers of security tokens will implement a system designed so that the company's register of members will be updated, automatically, to record the transfer of each share upon any transfer of the corresponding token such that there should never be a split in ownership of the token and underlying share.

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

There are many, many live blockchain based projects operating from the Cayman Islands. These include compliance, staking and liquidity, gaming and non-fungible tokens (**NFTs**).

17. 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?

Anecdotally, the authors understand that all of the major financial services providers in the Cayman Islands are exploring the use and adoption of AI. To date Cayman does not separately regulate the use of AI but will doubtless be guided by global standards as they are adopted.

18. 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?

As the second largest domicile globally for captives and as an increasingly prominent jurisdiction for reinsurance and insurance linked securities (ILS), the Cayman Islands is at the forefront of technology and innovation in the (re)insurance sector. There are a number of insurtech companies with a presence in Cayman already, and the Class B(iii) insurance licence provides an attractive route for new insurtech reinsurers to set up in Cayman. More traditional Cayman-based insurers and reinsurers are increasingly focussed on ways to embrace insurtech to help better identify risks and manage exposures and we expect this to continue to be a key focus area for the industry.

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

Cayman is a global technology hub. At the time of writing (January 2024) the authors understand that 25 service providers – including trading and exchange platforms, token issuers and custodians – have successfully registered with CIMA under the VASP Act. Occupants in the SEZ technology park include software developers and payments providers. See also (22) below.

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

New technologies have not yet displaced traditional financial service providers in Cayman. Cayman Finance, a group that represents Cayman's financial services sector, has established an innovation lab to engage with the financial services industry, regulators, the government and the media to promote the development and use of new technologies in the Islands.

Given Cayman's stringent know-your-customer (**KYC**) requirements, a number of service providers have adopted technologies to enable the onboarding of clients and the collection of KYC information digitally.

Informal conversations have also started concerning a potential framework of laws, developed under Cayman Finance and CIMA that might direct new technologies towards the institutional market.

Tokenised funds have proved increasingly popular in recent years. In a tokenised fund, an investor's interest is represented by a cryptographic token, as opposed to shares or other interests or units offered to investors in a more traditional fund structure.

There is no separate framework for the regulation of funds that invest in fintech projects or virtual assets in the Cayman Islands. The primary piece of legislation in the Cayman Islands relating to open-ended investment funds is the Mutual Funds Act. A "mutual fund" is defined as a common investment vehicle which issues equity interests that allows participation amongst a pool of investors in the profits or gains of that vehicle's investments and which is redeemable at the option of the investor.

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

Banks in the Cayman Islands have generally taken a conservative approach to fintech development and many are not keen to onboard as clients, projects that operate in this sector. However, new banking entrants to the local market are now starting to displace this approach and are embracing new technologies to onboard customers and manage those relationships and provide true technology driven banking solutions.

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

Cayman is proving a popular destination for decentralised finance (**DeFi**) protocols, and, has seen a sharp increase in awareness and understanding among corporate service providers who cater for entities registered in Cayman and who use DeFi protocols.

To date, the use of DeFi protocols is not regulated, except where they can be established to fall within existing regulation but by the very nature of decentralisation, regulators would find it difficult to regulate truly decentralised products.

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