



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Cayman Islands: Fintech
This country-specific Q&A provides an overview to
Fintech law in **Cayman Islands**.

It will cover open banking, regulation of
data, cryptocurrencies, blockchain, AI and insurtech.

This Q&A is part of the global guide to Fintech. For a
full list of jurisdictional Q&As
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1. **What are the sources of payments law in your jurisdiction?**

(a) the Money Services Law (2010 Revision) (MSL) which regulates money services business, which is defined as the business of providing (as a principal business) any or all of the following services:



(i) money transmission;

(ii) cheque cashing;

(iii) currency exchange;

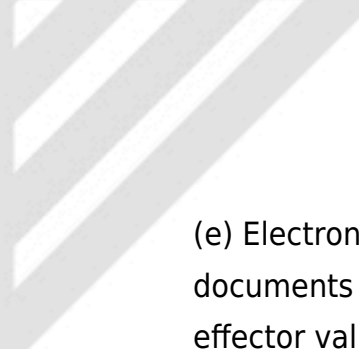
(iv) the issuance, sale or redemption of money orders or traveller's cheques;
and

(v) such other services as the Governor in Cabinet may specify by notice published in the Gazette.

(b) the Bank and Trust Companies Law (2018 Revision) (Bank and Trust Companies Law) which regulates banking business which is defined as "the business of receiving (other than from a bank or trust company) and holding 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.";

(c) the Proceeds of Crime Law (2018 Revision) (PCL) which has general application to all Cayman domiciled entities and the Anti-Money Laundering Regulations (2018 Revision) which regulates certain businesses conducting 'relevant financial business', as defined under the PCL which includes money or value transfer services and issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money);

(d) the Cayman Islands automatic exchange of information regime, which implements the international tax information disclosure regimes of the Foreign Account Tax Compliance Act and the Common Reporting Standards;



(e) Electronic Transactions Law (2003 Revision) provides that information, documents and contracts (or any provision thereof) shall not be denied legal effect or validity solely because it is in electronic form. Similarly, evidence of a contract (or provision thereof) shall not be denied admissibility solely because it is in electronic form and electronic signatures are also expressly permitted however the law provides certain restrictions on the acceptance of signatures.

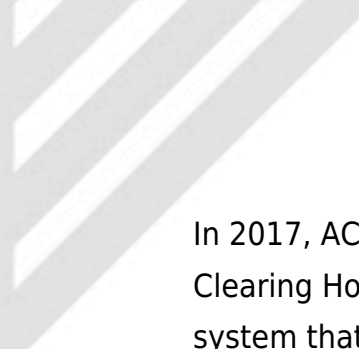
2. Can payment services be provided by non-banks, and if so on what conditions?

Yes, provided that if the payment services fall within the definition of “money services business” pursuant to the MSL, the provider obtain a licence under that law.

If the services do not fall under the MSL and the business is operating locally within the Cayman Islands, the service provider will need to comply with the Local Companies (Control) Law (2015 Revision) (the LCCL) and the Trade and Business Licensing Law, 2014 (the TBL). A foreign registered company and/or ordinary non-resident company doing business within the Cayman Islands will need to be licensed under the LCCL and the TBL. Local companies are required to maintain 60 % or more Caymanian control. Cayman Islands exempted companies are prohibited from doing business within the Islands.

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

There is no publicly available data on the popularity of payment methods used in the Cayman Islands.



In 2017, ACH (Cayman) Limited implemented the Cayman Islands Automated Clearing House (CIACH). CIACH is an electronic payment and cheque imaging system that is shared by participating banks in the Cayman Islands.

ACH (Cayman) Limited is jointly owned by the six class A retail banks: Butterfield Bank (Cayman) Limited, Cayman National Bank Ltd., CIBC FirstCaribbean International Bank (Cayman) Limited, Fidelity Bank (Cayman) Limited, RBC Royal Bank (Cayman) Limited and Scotiabank & Trust (Cayman) Limited.

The CIACH clears and settles electronic transactions and provide an exchange and settlement mechanism for domestic payments in KYD and USD currencies.

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?

There is no current, or proposed, legislation to mandate open banking in the Cayman Islands.

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

Due to come into effect in January 2019, the Data Protection Law (**DPL**) will regulate the future processing of all personal data in the Cayman Islands. The DPL provides a framework of rights and duties designed to give individuals greater control over their personal data. Personal data refers to any information

relating to an identified or identifiable natural person.

The DPL applies in respect of personal data to any data controller of an entity:

- established in the Cayman Islands, where the personal data is processed in the context of that establishment; or
- not established in the Cayman Islands, where the personal data is processed in the Cayman Islands other than for the purposes of the data's transit through the Cayman Islands.


The DPL was drafted with the specific aim of achieving adequacy status in the eyes of the EU to allow personal data to flow freely between EU member states and the Cayman Islands without additional mechanisms being put in place.

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?

The government of the Cayman Islands is supportive of fintech and focused on implementing regulation which encourages business growth. For example, Cayman Enterprise City is a special economic zone (the SEZ) that provides a cost-effective and time-efficient solution for establishing businesses, including fintech businesses. Within the SEZ, fintech businesses can establish a physical presence in the Cayman Islands with added benefits, such as a tax exempt environment and expedited work permit applications.

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

In terms of the Cayman Islands domestic market, the primary impediment to



growth in fintech is the small population limiting return on investment.

In respect of fintech being offered by entities located in the Cayman Islands in other jurisdictions, the Cayman Islands face a number of potential legislative challenges, which are shared by many of our competing jurisdictions, including the proposed changes to the beneficial ownership regime and the EU's approach to offshore jurisdictions. The Cayman Islands is dealing with these challenges and we expect a continued robust fintech industry.


There is also a shortage in local personnel skilled in the fintech industry however the SEZ encourages companies to relocate employees to the Cayman Islands.

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

There is no direct taxation in the Cayman Islands, which has encouraged fintech businesses to move their businesses to the jurisdiction and/or form Cayman Islands entities operating fintech businesses outside of the Caymans Islands. As noted, the SEZ provides a expedited and cost efficient path to establishing a business located in the Cayman Islands.

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

There is no data on the prevalence of Series A, B or C financing. We would anticipate that due to the early nature of many fintech businesses and from our experience, a majority of the investment is in Series A.



The Cayman Islands is a well regarded jurisdiction for the establishment of investment funds, many of these invest in crypto-assets. Further, there has been a substantial increase in the use of a Cayman Islands issuer in respect of initial coin offerings (ICOs) and several crypto exchanges have been formed using a Cayman Islands entity.

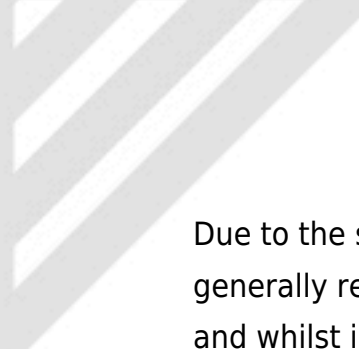
The Cayman Islands government and the financial services industry strongly supports investment in fintech.

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

The Cayman Islands greatest strengths, for entrepreneurs looking to establish a Cayman Islands entity to develop fintech and/or a physical presence in the Cayman Islands are:

- No direct taxation;
- Legal framework which promotes investment in fintech;
- Proximity to the United States of America and on the same time zone;
- English common law legal system and political stability;
- Short time frame to establish a business/entity; and
- Low establishments and operating costs.

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?



Due to the size of the local population, the Cayman Islands government generally recognises the limitations on the available skilled workforce locally and whilst immigration controls are in place, there are no specific caps or quotas and the businesses are encouraged to establish physical presence in the Cayman Islands particularly in the SEZ under the SEZ Employment Certificate.

Unless contracted to government, expatriates must either hold a valid work permit (which term includes a SEZ Certificate), a Certificate of Direct Investment, a Residency and Employment Rights Certificate or hold Permanent Residency with the right to work in a prescribed occupation or occupations in order to work and reside in the Cayman Islands. The administration of work permits is the responsibility of the Cayman Islands Government Department of Immigration.

All positions (other than SEZ Certificates) are required to be locally advertised and the vacancy registered with the National Workforce Development Agency prior to obtaining a work permit for an expatriate in that role. Generally, work permits will not be granted unless the applicant is professionally qualified, well experienced in the relevant field or there is no relevant experience in the local workforce.

The SEZ certificate can be granted for a five year renewable period, does not require the employer to advertise the position locally, is a simplified application procedure and is processed on an expedited basis (within five business days).

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 discussed above, the SEZ was formed specifically to encourage businesses, particularly in the fintech space, to establish a physical presence in the Cayman



Islands.

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

Copyright

The Cayman Islands updated its copyright laws in 2015 and 2016 to bring the laws in line with the most recent developments under the UK Copyright, Designs and Patents Act 1988, these expressly include computer programs and databases within the definition of “literary works” and protect them, as such, for a duration of 50 years.

Copyright is the right to prevent others from, among other things, copying the software and vests in the author on creation. In the fintech space, copyright is relevant in respect of rights to software.

Fintech companies will generally own a combination of an established brand or trade name, which can include logos or icons, these can be protected as registered or unregistered trade marks.

Trademark

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. The Trade Marks Law 2016, allows fintech companies to obtain trade mark protection in the Cayman Islands.

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. The patent regime provides 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 also prohibit bad faith infringement claims by “patent trolls”.

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

Cryptocurrencies are subject to the existing Cayman Islands regulatory framework. There is no statutory or regulatory definition of ‘cryptocurrencies’ under Cayman Islands law nor any specific legislation which regulates cryptocurrencies.

The following legislation may be of relevance to cryptocurrencies offered by a Cayman Islands entity:

1. The Proceeds of Crime Law, Anti-Money Laundering Regulations and existing guidance notes
2. The Securities Investment Business Law
3. FATCA and the Common Reporting Standards
4. The Money Services Law
5. Mutual Funds Law
6. Beneficial Ownership Regime

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

As noted above, there is currently no specific legislation applicable to Initial Coin Offerings (ICOs) and although there are no specific proposals to implement new legislation, there have been working groups established to consider possible legislation.

The applicability of legislation outlined below will need to be considered by Cayman issuers:

The Proceeds of Crime Law (PCL)

The PCL has general application to all Cayman domiciled entities. It is an offence under the PCL to enter into or becoming concerned in an arrangement which a person knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person (commonly known as “money laundering”). In addition, the PCL prescribes ancillary offences to money laundering which includes aiding, abetting, counselling or procuring money laundering.

Schedule 6 of the PCL, provides that certain businesses, which are considered to be conducting relevant financial business (**RFB**), must also comply with the Anti-Money Laundering Regulations (2018 Revision) (the **AML Regulations**).

The following business are included in the definition of RFB which may be relevant to the fintech sector; investing, administering or managing funds or money on behalf of other persons, issuing and managing means of payment eg. credit and debit cards, cheques, traveller’s cheques, money orders and bankers’ drafts, electronic money and money or value transfer services.

Anti- Money Laundering Regulations (AML Regulations) and Guidance Notes

If an entity is conducting RFB and therefore subject to the AML Regulations, it is required to implement know your client (KYC) and anti- money laundering (AML) policies and procedures which comply with the AML Regulations.

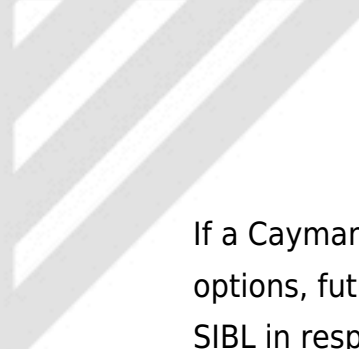
In addition to monitoring the business of the Company and the downstream investment activities, the AML Regulations require that an entity subject to the AML Regulations obtain customer due diligence information, including source of funds and information on beneficial owners on all initial token holders and transfers.

The Securities Investment Business Law

SIBL regulates securities and investment business in the Cayman Islands. Securities Investment Business refers to dealing in securities, arranging deals in securities, managing securities and advising on securities.

The definition of a "security" is set out in SIBL and contains a list of instruments which are common in today's financial markets (securities, instruments creating or acknowledging indebtedness, instruments giving entitlements to securities, certificates representing certain securities, options, futures and contracts for differences) and does not in and of itself include tokens issued in an initial coin offering.

Digital assets which take the form of warrants, options, futures or derivatives for securities or commodities may still be securities. If a Cayman Islands entity were deemed to be issuing securities, it would be exempt from any form of licencing under SIBL if the nature of the security were an equity interest, debt interest or a warrant or similar for equity or debt interests.




If a Cayman Islands entity were issuing, or trading in, digital assets which were options, futures or derivatives then it would need to consider the implications of SIBL in respect of licensing. For example a Cayman crypto exchange which offered options, futures or derivatives. A business considered to be conducting securities investment business must be licensed under the SIBL unless considered to be conducting excluded activities which includes those businesses which are only providing services to sophisticated persons, high net worth persons or a company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, unit holders or limited partners are one or more persons falling within such definitions. Excluded persons must register with the Cayman Island Monetary Authority and pay an annual fee.

Foreign Account Tax Compliance (FATCA) and the Common Reporting Standards (CRS)

FATCA requires foreign financial institutions and certain other non-financial foreign entities to report on the foreign assets held by US account holders or be subject to a 30% withholding tax on payments of United States source income and proceeds from the sale of property that could give rise to United States source interest or dividends. The withholding tax provisions of FATCA took effect on July 1, 2014 other than in relation to proceeds from the sale of property, in which case they have been postponed to January 1, 2019. The Cayman Islands has entered into an intergovernmental agreement with the United States in respect of FATCA and passed legislation to implement FATCA in the Cayman Islands.

The CRS is a global standard for the automatic exchange of financial account information in respect of holders of financial accounts and requires participating jurisdictions to obtain and report certain information. The Cayman Islands is a participating jurisdiction of the CRS. The Cayman Islands has passed legislation implementing both FATCA and CRS (the AEOI Legislation) which imposes reporting obligations on Cayman entities considered to be “Reporting Financial Institutions”.



The definition of Financial Institutions for the purposes of the AEOI Legislation includes Investment Entities, which are entities “that conduct as a business (or is managed by an entity that conducts as a business)” “investing, administering, or managing Financial Assets or money on behalf of other persons “. The definition of Investment Entity would include investment funds investing in virtual currency and tokenised funds. The definition of Financial Assets is very broad and includes securities and financial instruments however it specifically excludes a non-debt direct interest in real property.

An entity which is considered to be an Investment Entity will be required to implement a compliance and diligence program to allow the entity to identify and report Reportable Accounts. A Reportable Account is an account held by a one or more Reportable Persons or by a Passive Non-Financial Entity with one or more Controlling Persons that is a Reportable Person.

The definition of an account of an Investment Entity is “any equity or debt interest in the Investment Entity other than interests which are regularly traded on established securities markets”.

It is arguable that the tokens issued by an Investment Entity do not constitute either “equity or debt interest”, which are not further defined in respect of an Investment Entity. However, there are anti-avoidance provisions in both the Cayman FATCA and CRS legislation which would arguably apply to these interests.

The Financial Institution is required to register with the US Internal Revenue Service for a GIIN and appoint a principal point of contact and authorised person and then register with the Cayman Tax Information Authority.

The Financial Institution would be required to report, by 31 May in each year, the name, address, taxpayer identification number, date of birth (where applicable), account number and account balance or value as at the period end

and in respect of any accounts closed during the period.

In respect of Financial Institutions issuing tokens, the Financial Institution will need to obtain self-certification forms in respect of the initial purchasers and subsequent transferees of such tokens.

Money Services Law

As cryptocurrencies (subject to very limited potential exceptions) are not legal tender in any country, an ICO is likely not to be considered a money transmission business and therefore would not require a licence in the Cayman Islands.

Mutual Funds Law (MFL)

The current definition of “equity interests” in the MFL (which is a key determining factor as to whether an entity qualifies as a “Mutual Fund”) excludes most ICO issuers as tokens are not considered to be equity interests and therefore ICO issuers (as distinct from any blockchain/cryptocurrency asset class focused fund) should not be impacted by the MFL.

Beneficial Ownership Legislation (BOL)

The BOL requires certain companies to maintain details of their beneficial owners and related legal entities on a beneficial ownership register.

If the issuer of an ICO is a Cayman company, the company will need to provide the full name, residential address and identification document details of any entity or person holding more than 25% of the shares or control of the company. If the company is an issuer in respect of an ICO, whether the company will be required to disclose any details in respect of the holders of

tokens pursuant to the BOL, will depend on the rights attaching to such tokens.

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

There are numerous live blockchain projects, either developed by Cayman companies or financed by ICOs using Cayman Islands issuers, in a variety of difference areas including preventing counterfeit products (Wabi), blockchain software architecture (EOS) and cryptocurrency exchanges (cobinhood).

We are aware of other numerous projects which are not able to comment on publicly at this time.

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?**

The use of AI by Cayman Islands investment funds is becoming more common for example trading techniques in the context of complex quant trading.

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?**

We are not aware of any insurtech business in the Cayman Islands.

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

Due to the advantages noted above, the Cayman Islands has been very successful in attracting fintech businesses to establish Cayman entities and/or a physical presence in the SEZ, these businesses predominantly serve a market outside of the Cayman Islands and includes ICO, investment funds investing in crypto assets and companies involved in fintech research and development.


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

Due to the size of the domestic market and the restrictions on doing business within the Cayman Islands, there has not yet been significant disruption of incumbent financial institutions.

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

As noted above, there have not been significant developments in the domestic market however there are numerous businesses based in the SEZ involved in fintech development/innovation.

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



Disruption through fintech has mainly occurred not in the domestic market but developments by businesses based in the SEZ and/or operating through a Cayman Islands entity.