



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Bermuda: Fintech (2nd edition)

This country-specific Q&A provides an overview of the legal framework and key issues surrounding fintech law in Bermuda.

This Q&A is part of the global guide to Fintech.

For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/fintech-2nd-edition>



Country Author: BeesMont Law limited

The Legal 500



**Stephanie P. Sanderson,
Partner, Head of
Technology & Innovation**

spsanderson@beesmont.bm



**Alex Fox, Corporate
Attorney**

afox@beesmont.bm

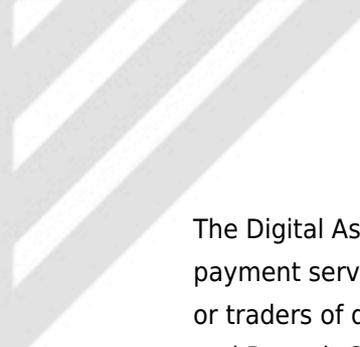


**Kit Cunningham, Corporate
Attorney**

kcunningham@beesmont.bm

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

The Bermuda Monetary Authority provides risk-based regulation and supervision of all banks and deposit companies in Bermuda. The regulatory and supervisory framework is underpinned by principal legislation, the Banks and Deposit Companies Act 1999, as amended, which is regularly supplemented with updated statements of principles, policy and guidance.



The Digital Asset Business Act 2018 (**DABA**) regulates digital-asset businesses including payment service providers, electronic exchanges, custodial wallet services and market makers or traders of digital assets. See Question 14 for further information on DABA. Further, the Banks and Deposit Companies Amendment Act 2018, which came into force on 17 August 2018, permits financial institutions to apply to the Bermuda Monetary Authority for a restricted license enabling them to provide banking services to companies (and agents or affiliates of the same) who are licensed under the DABA or wish to conduct an initial coin offering. As of the date of writing, no such license has been granted by the Bermuda Monetary Authority.

See Question 2 with respect to money service business.

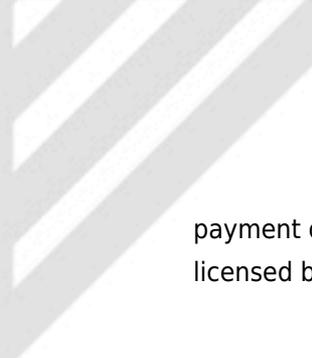
2. Can payment services be provided by non-banks, and if so on what conditions?

The Money Service Business Act 2016, as amended, allows for money transmission services, cashing cheques, issuing and redeeming drafts, money orders or traveller's cheques for cash, operating a payment service business, and operating a bureau de change; to be conducted by non-banks. However, money services business can only be carried on by those companies who attain a license from the Bermuda Monetary Authority.

The DABA has further extended this to cryptocurrency exchange platforms and custodial wallet services. As mentioned above, any company looking to operate a cryptocurrency exchange platform or offer custodial wallet services, will be required to attain a licence from the Bermuda Monetary Authority. As of the date of writing, there are banks and financial institutions that are established outside of Bermuda which are willing to provide banking services to Bermuda-based licensed companies, subject to their own internal policies, including a particular well-known full service commercial bank and provider of blockchain-based platform management.

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

The most popular payment methods and payment instruments still tend to be traditional, for example, utilising fiat bank accounts for credit transfers, as well as debit and credit cards. However, more businesses in Bermuda are starting to accept cryptocurrency payments. On 16 October 2019, the Government of Bermuda announced that it plans to start accepting for



payment of government taxes, fees and services, 1:1 US dollar backed stablecoins that get licensed by the Bermuda Monetary Authority.

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?

To date, the concept of open banking has not been prevalent with financial institutions operating from within Bermuda. However, as the fintech industry and the development of financial technologies continues to flourish in Bermuda and become more sophisticated, open banking concepts may be developed in Bermuda in future.

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

With the implementation of the General Data Protection Regulation (**GDPR**) in the European Union and the pending implementation of the Personal Information Protection Act 2016 (**PIPA**) in Bermuda, organisations in the financial services sector have been striving to ensure compliance with relevant data protection legislation and regulations in Bermuda. PIPA delineates conditions required to be met in order for an organisation to use personal information, as well as the obligations of an organisation's privacy officer for compliance purposes.

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 Bermuda regulators have provided a robust legislative framework for fintech companies to use as a solid foundation to develop their products and services. Such regulatory framework has

provided comfort to potential and actual fintech clients by implementing much needed certainty in a developing industry. Bermuda has repeatedly demonstrated its commitment to encouraging innovation in the financial sector through various initiatives, including, but not limited to, the following:

- This year marked the first ever Bermuda Tech Week hosted by the Bermuda Government and Bermuda Business Development Agency that encompassed a week of conferences showcasing fintech industry players, both local and abroad, and securing Bermuda's position as an international leader in the fintech sector.
- On 16 October 2019, the Government of Bermuda announced that it intends to start accepting for payment of government taxes, fees and services, 1:1 US dollar backed stablecoins that get licensed by the Bermuda Monetary Authority.
- The Bermuda Government, through experts in the fintech industry, are offering free online or in-person training for those interested in blockchain, fintech and anti-money laundering regulatory compliance.
- The Government has worked on encouraging banks and financial institutions to provide banking services to Bermuda-based licensed companies, subject to their own internal policies, including a particular well-known full service commercial bank and provider of blockchain-based platform management.
- The Bermuda Monetary Authority has proposed establishing an insurance regulatory sandbox dubbed the 'insurtech sandbox' (**Sandbox**). The Sandbox is a space where companies can test new technologies and offer innovative products, services and delivery mechanisms to a limited number of customers in a controlled environment and for a limited period of time. See Question 18 for further information on insurtech initiatives in Bermuda.
- The Government has introduced a specific fintech work permit policy to support immigration of key personnel in this business sector - see Question 11.

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

Banking in the fintech market has been a global issue as financial institutions around the world have been hesitant to provide financial services for this sector. As mentioned in Question 1, under the Banks and Deposit Companies Amendment Act 2018 financial institutions are able to apply to the Bermuda Monetary Authority for a restricted license enabling them to provide banking services to Bermuda-based fintech companies. As of the date of writing, no such

license has been granted. However, Bermuda has made strides in forging connections with banks that are based in other jurisdictions which are willing to provide banking services to Bermuda-based fintech businesses.

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

A company establishes tax residency when it is incorporated in Bermuda. However, exempt undertakings (that is, entities that are not local or Bermudian owned) are eligible for the tax exemption certificate. The certificate is an assurance from the Minister of Finance that for the period up to 31 March 2035, an exempted undertaking is not liable to pay certain taxes. These taxes are any taxes:

- imputed on profits or income;
- computed on any capital asset, gain or appreciation; or
- in the nature of estate duty or inheritance tax.

Any business with employees physically based in Bermuda, whether local or exempted, is subject to Bermuda's consumption tax regime (whether or not they have an exemption certificate) which includes payroll tax.

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

The areas of the fintech industry that are attracting the most investment are insurtech, blockchain, marketplace lending, infrastructure and enterprise software, and artificial intelligence. The majority of the investment level these companies are looking to attract is Series A, with some companies at the Series B level. Given that this sector is still rapidly developing in Bermuda, it is difficult to predict which areas of fintech will be the most successful at attracting investment at this stage or which areas of fintech are predominantly focused on Series A over Series B, or vice versa.

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

Bermuda's Government and regulators have provided a robust legislative framework for fintech companies to use as a solid and reliable foundation to develop fintech products and services. The regulatory framework in Bermuda provides comfort to potential and existing fintech clients, which increases certainty in a developing industry. Bermuda is also an attractive jurisdiction to begin operations due to its responsive and engaged Government and regulators, the competitive pace at which they have established a regulatory framework and ability for it to adapt efficiently to international industry standards.

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?

Bermuda's pioneering work to regulate the global blockchain industry has attracted interest and incorporations from various fintech businesses, including start-ups, and the Bermuda Government has demonstrated that it understands the need for access to talent, as well as promoting jobs for Bermudians in the fintech sector. To this end, the Bermuda Government has implemented a new immigration policy for fintech companies desirous of setting up businesses in Bermuda. The Fintech Business Work Permit Policy allows a fintech company that is new to Bermuda to receive automatic approval of up to five (5) work permits within the first six (6) months of obtaining the first Fintech Business Work Permit.

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?

The Bermuda Monetary Authority's Insurance Innovation Committee was established in 2017 and developed a cyber-supervision regime, including enhancements to the Capital and Solvency Return for disclosures about cyber-related data for commercial (re)insurers. In addition, the



Committee worked with financial technology experts from industry to identify components of a sound regulatory regime for fintech. The Bermuda Monetary Authority's 2018 legislative agenda included advising on fintech legislation and policy. The regulator has previously stated that it would work with financial technology experts from industry to explore the need for associated regulation and development of specific supervisory skills related to fintech.

See Question 11 with respect to immigration policy.

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

Intellectual Property protection in Bermuda is available for trademarks, patents, copyright, and design. The available relief for infringement are injunctions (permanent or emergency), Anton Pillar orders, discovery upon oath, damages, delivery up of infringing article and/or destruction, and enquiry as to damages or an account of profits.

Trademark law in Bermuda is largely based on the United Kingdoms' (UK), however Bermuda operates an independent trademark register at the Government of Bermuda Intellectual Property Office. The Bermuda Intellectual Property Office currently requires that a national patent application be sent to the UK for search and examination. Additionally, any UK patent or European patent designating the UK can be reregistered in Bermuda within three (3) years of the original grant.

Many multinational and blue chip companies have benefitted from utilising Bermuda strategically to capitalise on particular tax benefits. A typical structure would result in a Bermuda-based companies collecting fees and other revenue associated with their intellectual property and being able to repatriate funds in accordance with Bermuda's strategic legislative framework.

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

As of the date of writing, cryptocurrencies are regulated primarily under the Digital Asset Business Act 2018, as amended (DABA). DABA regulates digital asset business carried on in or

from within Bermuda and provides that a person cannot carry on digital asset business in or from within Bermuda unless the person is a licensed undertaking in one of the specified classes or satisfies the requirements as set out in a corresponding exemption order pursuant to DABA.

Pursuant to section 2(2) of DABA, 'digital asset business' is defined as:

(a) Virtual Coins Dealer - issuing, selling or redeeming virtual coins, tokens or any other form of digital asset;

(b) Payment Service Provider - operating as a payment service provider business utilising digital assets which includes the provision of services for the transfer of funds;

(c) Digital Asset Exchange Operator- operating as a digital asset exchange, which includes any centralized or decentralized electronic marketplace used for digital asset issuances, distributions, conversions and trades, including primary and secondary distribution, with or without payment; ;

(d) Digital Asset Trust Services Provider - carrying on digital asset trust services, including carrying on the business of acting as a fiduciary, agent, or trustee on behalf of another person for the purpose of administration and management of a digital asset;

(e) Custodial Wallet Services Provider - providing custodial wallet services, which encompasses providing services or storing or maintaining digital assets or a virtual wallet using a software program that stores private and public keys and interacts with distributed ledger technology to enable users to send, receive and monitor the digital assets on behalf of a client

(f) Digital Asset Derivative Exchange Provider - operating as a digital asset derivative exchange provider, which includes operating a digital asset derivative exchange and providing the services of creating, selling or otherwise entering into digital asset derivatives contracts or clearing and settlement of digital asset derivatives; or

(g) Digital Asset Services Vendor - operating as a digital asset services vendor, which includes (as part of its business), undertaking digital asset transactions on behalf of another person or having power of attorney over another person's digital assets; or operating as a market maker for digital assets; or operating as a digital asset benchmark administrator).

If a company wishes to carry out digital asset business as defined under DABA, it is required to

apply for a license from the Bermuda Monetary Authority, for either a class F license (full license) or a class M license (temporary license). DABA also stipulates mandatory submission of a business plan and imposes ongoing reporting obligations, disciplinary actions and civil penalties for breach of requirements, as well as minimum criteria for licensing.

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

Bermuda launched the world's most progressive initial coin offering (ICO) legislation in the form of the **Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018** which came into effect on 9 July, 2018 and the **Companies (Initial Coin Offering) Regulations 2018 and Limited Liability Company (Initial Coin Offering) Regulations 2018** which came into effect on 10 July, 2018 (collectively, the **ICO Legislation**). As of the date of writing, the **ICO Legislation** applies to companies issuing ICOs (which also captures security token offerings or STOs) and imposes certain legal requirements which a company must comply with, including publishing an offering document (often referred to as a 'white paper') with mandatory disclosures and certain risk language to be included.

We anticipate that the **ICO Legislation** may be further honed in the future as necessary to keep up with international trends and regulatory demands.

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

There are various start-ups which are deploying blockchain-based projects in Bermuda, including projects being developed in connection with telecommunications, film and entertainment, gaming, and project finance. The Government has also announced various enterprise initiatives.

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?

Artificial intelligence (**AI**) is certainly an area of growth in the financial sector in Bermuda. We are seeing start-ups developing AI for things like robo-advisory services in the investment and funds sector as well as cyber-underwriting in the insurance sector.

The regulatory regime and tech-friendly environment in Bermuda encourages AI's further use and development within the jurisdiction.

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?

Given that Bermuda is a leading centre for insurance, it is apt that Bermuda be at the forefront of insurtech developments. Bermuda-based insurers have already made moves into this space, demonstrating the industry's innovative nature. For example, Willis Towers Watson recently announced that the first blockchain transaction for marine insurance has been delivered.

The Bermuda Monetary Authority recognises the growing importance of disruptive innovation in the insurance and wider financial industry and the critical role that innovation plays in promoting efficiency and enhancing competitiveness in the market. In order to ensure the viability of the Bermuda market, the Bermuda Monetary Authority has launched both an Insurance Regulatory Sandbox (**Sandbox**) and an Innovation Hub (explained below).

The Sandbox is a mechanism by which licensed insurance companies under the Insurance Act 1978 would be able to apply for a license from the BMA to allow them to test new technologies and offer new products, services and other delivery methods to certain policy holders (for a set amount of time). The BMA would need to review the company's proposal, and determine appropriate regulatory requirements and modifications to allow the Sandbox testing. Upon successful completion of the Sandbox testing, the company would be re-licensed under the relevant legal and regulatory requirements.

The Sandbox eligibility criteria includes:

- technology must be new or use existing technology in a different way;
- research and due diligence must be conducted in advance of the application;
- testing objectives must be clearly defined;
- the applicant must demonstrate its understanding and assessment of associated risks and their mitigation;
- the applicant must demonstrate its understanding that policyholders and counterparties are adequately protected against loss during the testing stage;
- the applicant will be required to have a well-defined exit or transition strategy in case the testing is unsuccessful or discontinued; and
- the applicant must demonstrate that it has the intention, ability, and resources to deploy the relevant product, service or distribution channel upon successful testing and exit from the sandbox.

The Bermuda Monetary Authority is keen to promote broader dialogue on innovative insurance solutions with all market participants, including those conducting activities that are not directly regulated by the regulatory. The Bermuda Monetary Authority has therefore created a working group (BMA insurance innovation working group or BMA IWG) that seeks to act as a platform for exchanging ideas and information (Innovation Hub). The Innovation Hub may also be used by companies that will eventually apply for entry into the Sandbox when the concept is sufficiently developed, e.g. cases where the company is still developing its thoughts and ideas and not yet prepared for proof of concept.

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

Bermuda is one of the world's leading offshore financial centres with a long history of providing pragmatic financial and professional services to the international business sector and it has more recently been gaining international attention as a leading centre in all areas of fintech.

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

institutions?

Although the rapid pace of growth in regulation of the fintech industry has been extremely beneficial to fintech businesses, it has created some challenges to incumbent financial institutions. Nevertheless, incumbent financial institutions have been proactive in trying to develop policies that may be able to better accommodate or compete with fintechs entering the Bermuda corporate environment. As the fintech industry continues to develop globally, incumbent financial institutions will likely become more receptive to fintech business.

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

As mentioned in Questions 1 and 7, the Banking and Deposit Companies Amendment Act 2018, which came into force on 17 August 2018, permits financial institutions to apply to the Bermuda Monetary Authority for a restricted license enabling them to provide banking services to companies (and agents or affiliates of the same) who are licensed under the DABA or wish to conduct an initial coin offering. As of the date of writing, no such license has been granted by the Bermuda Monetary Authority.

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

Disruptions through fintech are developing through Bermuda-based business operating internationally, however, as of yet there have not been any disruptions in the domestic market thus far.