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Andorra

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Cases & Lacabra

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ANDORRA

Law and Practice

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Contents

1. Fintech Market	p.4	6. Fund Administrators	p.9
1.1 Evolution of the Fintech Market	p.4	6.1 Regulation of Fund Administrators	p.9
2. Fintech Business Models and Regulation in General	p.5	6.2 Contractual Terms	p.9
2.1 Predominant Business Models	p.5	6.3 Fund Administrators as “Gatekeepers”	p.10
2.2 Regulatory Regime	p.6	7. Marketplaces, Exchanges and Trading Platforms	p.10
2.3 Compensation Models	p.6	7.1 Permissible Trading Platforms	p.10
2.4 Variations Between the Regulation of Fintech and Legacy Players	p.6	7.2 Regulation of Different Asset Classes	p.10
2.5 Regulatory Sandbox	p.6	7.3 Impact of the Emergence of Cryptocurrency Exchanges	p.10
2.6 Jurisdiction of Regulators	p.6	7.4 Listing Standards	p.11
2.7 Outsourcing of Regulated Functions	p.6	7.5 Order Handling Rules	p.11
2.8 Significant Enforcement Actions	p.7	7.6 Rise of Peer-to-Peer Trading Platforms	p.11
2.9 Implications of Additional Regulation	p.7	7.7 Issues Relating to Best Execution of Customer Trades	p.11
2.10 Regulation of Social Media and Similar Tools	p.7	7.8 Rules of Payment for Order Flow	p.11
2.11 Review of Industry Participants by Parties Other Than Regulators	p.7	8. High-Frequency and Algorithmic Trading	p.11
2.12 Conjunction of Unregulated and Regulated Products and Services	p.7	8.1 Creation and Usage Regulations	p.11
3. Robo-Advisers	p.7	8.2 Exchange-like Platform Participants	p.11
3.1 Requirement for Different Business Models	p.7	8.3 Requirement to Register as Market Makers When Functioning in a Principal Capacity	p.11
3.2 Legacy Players’ Implementation of Solutions Introduced by Robo-Advisers	p.7	8.4 Issues Relating to the Best Execution of Trades	p.11
3.3 Issues Relating to Best Execution of Customer Trades	p.8	8.5 Regulatory Distinction Between Funds and Dealers	p.11
4. Online Lenders	p.8	8.6 Rules of Payment for Order Flow	p.11
4.1 Differences in the Business or Regulation of Loans Provided to Different Entities	p.8	9. Financial Research Platforms	p.11
4.2 Underwriting Processes	p.8	9.1 Registration	p.11
4.3 Sources of Funds for Loans	p.8	9.2 Regulation of Unverified Information	p.11
4.4 Syndication of Loans	p.8	9.3 Conversation Curation	p.12
5. Payment Processors	p.8	9.4 Platform Providers as “Gatekeepers”	p.12
5.1 Payment Processors’ Use of Payment Rails	p.8	10. Insurtech	p.12
5.2 Regulation of Cross-border Payments and Remittances	p.8	10.1 Underwriting Processes	p.12
		10.2 Treatment of Different Types of Insurance	p.12

ANDORRA CONTENTS

11. Regtech	p.13
11.1 Regulation of Regtech Providers	p.13
11.2 Contractual Terms to Assure Performance and Accuracy	p.13
11.3 Regtech Providers as “Gatekeepers”	p.13
12. Blockchain	p.13
12.1 Use of Blockchain in the Financial Services Industry	p.13
12.2 Local Regulators’ Approach to Blockchain	p.13
12.3 Classification of Blockchain Assets	p.14
12.4 Regulation of “Issuers” of Blockchain Assets	p.14
12.5 Regulation of Blockchain Asset Trading Platforms	p.14
12.6 Regulation of Invested Funds	p.14
12.7 Virtual Currencies	p.14
12.8 Impact of Privacy Regulation on Blockchain	p.14
13. Open Banking	p.14
13.1 Regulation of Open Banking	p.14
13.2 Concerns Raised by Open Banking	p.15

1. Fintech Market

1.1 Evolution of the Fintech Market

The Principality of Andorra (Andorra) is a microstate situated in the southwest of Europe, bordered by Spain and France, which has historically based its significant economic prosperity on a competitive model that encompasses tourism, trade, construction and its capacity as a financial hub. Since 2008, the jurisdiction has provided a host of international strategic opportunities at both the corporate and individual level, based on the liberalisation of foreign investment, which is complemented by a competitive tax framework. This new economic model has enabled the country to become an attractive jurisdiction with respect to the development of investment projects and business initiatives.

In the last 12 months, Andorra has experienced a remarkable growth in initiatives with regard to fintech and the establishment of companies (start-ups) providing innovative solutions and competing directly with large local companies. However, the number of fintech companies is, for the time being, small when compared to EU countries.

The scope of action of fintech companies is restricted by the strong presence of the financial industry, with the long-standing traditional banking sector as the backbone of the present Andorran economy, along with the fact that the provision of financial and investment activities triggers licensing requirements (Andorra is not a member of the EU).

With reference to Andorran financial entities (ie, banking entities, financial investment entities, management companies for collective investment schemes, non-banking financial entities that offer specialised credit, insurance companies, payment entities and electronic money institutions), technological innovation brings with it the possibility of a great improvement in their business model (by means of, eg, digital identification, mobile applications, cloud computing, big data or DLT/blockchain) and, consequently, this represents a paradigm shift.

Fintech solutions are helping in daily financial activities and are bringing Andorran financial entities the opportunity to be prepared for future challenges, by adapting their services and processes to international standards and the latest technological innovations, promoting competition worldwide and facilitating cost reduction.

Other stakeholders are also beneficiaries of the fintech ecosystem, including citizens looking for more sophisticated services and products, who are becoming increasingly involved in this environment.

Furthermore, it is worth mentioning the strong commitment of the Andorran government (*govern d'Andorra*), alongside the promotion of fintech solutions, entrepreneurship and disruptive innovation (eg, the use of DLT, the IoT and AI) by Andorran public authorities or entities, financial entities, and Andorran representative companies and local associations, which are clear indicators of a very significant step towards the new technological paradigm. However, the challenges presented within the context of fintech (ie, cybersecurity, consumer protection, personal data protection or anti-money laundering and terrorism financing) must be carefully observed with the aim of promoting a sound level of regulation/supervision (preventing regulation arbitrage), equal competition and a level playing field for incumbent institutions and new players.

To this extent, and in conjunction with the Andorran government, other actors who are involved in the Andorran digital transformation, under the symbolic motto on Andorra's flag, *Virtus Unita Fortior*, are:

ACTUA

ACTUA is a programme promoted by the Andorran government under the legal form of a public agency, which includes several ministries, government agencies, associations and/or organisations from the private sector. ACTUA provides support to foreign investment and Andorran companies in their innovation processes.

The promotion of economic diversification is developed by ACTUA through different clusters related to, inter alia, innovation, health and sports.

The ACTUA Cluster of Innovation and New Technologies of Andorra Association (ACTinn), is a non-profit association, created by the collaboration of local companies and promoted by ACTUA. ACTinn facilitates the development of entrepreneurial initiatives, and contributes to the modernisation of the Andorran traditional sectors (eg, banking entities), in order to place Andorra as a benchmark of efficiency and excellence within the areas of innovation and new technologies. Additionally, ACTinn promotes the organisation of events to showcase trends and advances, projects and services available, as well as new technologies of interest to companies, entrepreneurs and institutions.

Likewise, ACTUA has driven the creation of an innovation hub in Andorra (Living Lab), with some disruptive projects related to big data and blockchain technology.

The Andorran Financial Authority (AFA)

The AFA is also committed to new fintech and, overall, to technical and regulatory advances in the financial sector, always

prioritising the protection of investors. Accordingly, the AFA has established a channel of communication in order to answer questions from entrepreneurs related to the possibility of rendering financial or investment services.

There is also a challenge for the AFA to ensure that fintech practices are properly provided without undermining consumer protection, the level playing field and the stability of the Andorran financial system as a whole.

The Andorran Banking Association (ABA) and Andorran Financial Entities

Technological innovation is at the core of the ABA initiatives to the extent that new products and services are coming from banks and start-ups alike. As a result, the ABA is working together with ACTUA and Andorran banking entities to face the challenges and opportunities in the field of fintech and digital transformation.

In the same vein, Andorran financial entities stand up for innovation in business and actively contribute to promoting fintech solutions and supporting entrepreneurs. Some remarkable examples are the World Finance's award of best consumer digital bank 2019 given to Mora Banc Grup, SA and the creation of Scale Lab, promoted by another Andorran banking entity, Crèdit Andorrà, SA. Scale Lab is a business acceleration programme for entrepreneurial projects in the consolidation and/or growth phase that combines consultation and funding activities to help participating companies identify and implement a suitable growth strategy.

Andorra Telecom and NIU

Andorra Telecom has focused on digitalisation within the context of its relationship with customers. Additionally, Andorra Telecom has created the NIU programme with a view to successfully launching entrepreneurial initiatives related to telcoms-media-digital (TMD) by providing optimal solutions and resources to ensure business success.

By way of illustration, some examples of such start-ups' initiatives have been, inter alia, a big data solution for banking entities and insurance companies and a pioneering technological solution based on blockchain in order to guarantee the traceability of natural and quartz composite stone and porcelain stoneware.

At present, the main milestones achieved have been:

- collaboration agreements signed with Alastria, a Spanish non-profit association that promotes the digital economy through the development of DLT/blockchain, and ProteumX, a blockchain accelerator based in Silicon Valley; and

- the organisation of demo-days, forums where start-ups present their projects, which are a timely opportunity for investors interested in innovative and high-growth-potential disruption.

The Andorran Business Confederation (Confederació Empresarial Andorrana or CEA)

The CEA is an Andorran association, the aim of which is to represent, manage, promote and defend the general and common interests of Andorran business and professional organisations.

It promotes economic diversification in terms of sectoral needs through various clusters, in collaboration with other public institutions (ie, Andorra Telecom, ACTUA and FEDA). Disruptive innovation is achieved with the cluster of blockchain.

The CEA's initiative has crystallised in the creation of the And-Blockchain association, the purpose of which is the creation of a flourishing Andorran ecosystem of DLT/blockchain projects under a regulatory framework.

Finally, the participation of other sectors of the Andorran economy is worth noting, such as the cinema or audio-visual sector with the documentary on blockchain *Crossing Blocks*.

2. Fintech Business Models and Regulation in General

2.1 Predominant Business Models

The Andorran fintech environment is still at an embryonic development level, although there has been remarkable growth in fintech initiatives and the establishment of newcomer companies/start-ups competing directly with the potent local financial industry, dominated by the banking sector with a few key players (operating banking groups).

Against this background, the Andorran fintech sector has not reached the stage of having verticals, per se, and being able to distinguish between new and legacy players. Nonetheless, it is perceptible that the Andorran government, the AFA and the ABA have a favourable stance towards the fintech sector. This positive trend is expected to grow in the coming years, and it is probable that an ad hoc fintech regulatory framework will be set up.

To date, the fintech environment in Andorra includes a venture capital consultancy, along with blockchain technology operators and specialised start-ups.

Also noteworthy is the growing presence in Andorra of a wide variety of companies/start-ups. Although the verticals are not

clearly defined, the technological companies/start-ups involved with payment systems are dominant, along with those providing tokenisation or blockchain technology.

2.2 Regulatory Regime

As mentioned in 2.1 **Predominant Business Models**, Andorra has not set up a regulatory regime applicable to fintech players and the fintech sector is still at an initial level. However, it appears that the main regulatory fintech developments will relate to and be applicable to the core banking business of local banking entities (eg, the processing of payments based on blockchain technology, investment advice or portfolio management), taking the payment services regulatory framework – the update of implemented Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (PSDI) to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSDII) – and the insurance legal framework as starting points.

Furthermore, the implementation of MiFID II, EMIR and AML5, which is planned for this year, faces some challenges in fintech ecosystem and DLT/blockchain regulation (ie, cryptocurrency exchange services or custodian wallet providers). This implementation process will be complemented by the AFA's Technical Communications (*Comunicats Tècnics*) and further connected instruments, and the progressive implementation of further EU regulations through the Annex to the Monetary Agreement.

In addition, Andorra has implemented legal aspects of the electronic identification and trust services, well known as eIDAS Regulation, that constitutes the main electronic identification trust framework in the EEA through Act 35/2014, 27 November, on trusted e-services (Trusted e-services Act).

This particular piece of legislation will play a pioneering role in the forthcoming regulation of DLT/blockchain within Andorra.

2.3 Compensation Models

There are no particular provisions in Andorra governing compensation models that industry participants are allowed to use to charge customers (with the exception of financial and investment activities). The only reference is in terms of transparency under consumer protection regulations.

2.4 Variations Between the Regulation of Fintech and Legacy Players

There is as yet no double-tier fintech regulation that distinguishes between legacy and new players.

2.5 Regulatory Sandbox

Although there is presently no regulatory sandbox set up within Andorra, an embryonic initiative is under development by the Andorran government and ACTUA with the aim of testing new business models that are not regulated.

Regulatory sandboxes, as well as innovation hubs, promote dialogue between fintech firms and regulators/supervisors about the deployment of new technologies in a closely controlled environment.

A clear example of an innovation hub in Andorra is the Living Lab developed by ACTUA.

2.6 Jurisdiction of Regulators

The AFA stands as the single supervisory body (ie, there is no twin-peaks model) with supervisory powers over the local banking and insurance/reinsurance sector (Andorra lacks specific capital markets legislation), but it has not yet been armoured with a specific fintech regulatory framework.

With the implementation of the PSDII, other players have entered into the payment services scheme, namely, payment initiation service providers and payment information service providers, who are bound by the anti-money laundering regulation and fall under the supervisory power of the Financial Intelligence Unit of Andorra (UIFAND).

With the forthcoming implementation of AML5, it will be possible to see how the role of the UIFAND will spread to the new technological environment.

2.7 Outsourcing of Regulated Functions

Regulated functions which involve the provision of financial services should not be outsourced to third-party vendors, to the extent that the provision of financial services in Andorra is subject to obtaining prior authorisation from the AFA (under its reservation activity regime). Therefore, any regulated functions which are performed/provided within Andorra should be exclusively carried out by local financial entities authorised to operate in the Andorran financial system by the AFA (referred to here as "local entities").

In light of this and to avoid potential breaches of the reservation activity regime, regulated functions should be outsourced to another local entity.

However, ancillary services which do not entail the provision of financial services may be outsourced (eg, technological solutions/software concerning payment services or fund administration).

2.8 Significant Enforcement Actions

Due to the absence of a fintech regulation framework, no enforcement actions have yet been taken by the AFA.

However, bearing in mind the size of the country and the limited number of players, the AFA is remarkably active in sounding the market to detect any regulatory infringement.

2.9 Implications of Additional Regulation

At present, privacy, anti-money laundering and cybersecurity laws have not been amended to reflect the particulars deriving from the new technological paradigm, including DLT, AI, IoT and the blockchain environment.

2.10 Regulation of Social Media and Similar Tools

There is currently no specific regulation of social media or similar tools, but only an act regulating contracting in an electronic environment.

2.11 Review of Industry Participants by Parties Other Than Regulators

There is not as yet any effective ongoing regulatory surveillance of new fintech players/initiatives in Andorra.

However, the AFA is highly involved in local fintech initiatives, paying close attention to any new issues and establishing an open dialogue with the local fintech ecosystem.

2.12 Conjunction of Unregulated and Regulated Products and Services

No specialised fintech players currently operate in Andorra and, as a result, industry participants do not offer unregulated/unregulated-regulated products and services to the general public as yet.

3. Robo-Advisers

3.1 Requirement for Different Business Models

Andorra is not a member of the EU. Accordingly, the freedom of provision of financial and investment services granted by the European passport does not apply. All financial and investment activities directly carried out within the Andorran jurisdiction:

- are subject to prior authorisation by the AFA; and
- can only be carried out directly by local entities (ie, under the reservation activity regime).

Investment advice is a regulated activity in Andorra and it may only be rendered by the following local entities:

- banking entities;

- financial investment entities;
- financial investment agencies;
- asset management companies; and
- financial advisers.

Robo-advisers are automated digital platforms that provide financial and investment advice using algorithms. To the extent that this technology implies the provision of investment advice, the development of a robo-adviser platform addressing investors in Andorra triggers licensing requirements.

In the event that robo-adviser platforms engage in the management of portfolios in accordance with mandates given by clients on a discretionary client-by-client basis, and where such portfolios include one or more financial instruments, the provision of the service will trigger licensing requirements as it is a regulated activity in Andorra. Management portfolios can only be rendered by the following local entities:

- banking entities;
- financial investment entities;
- financial investment agencies; and
- asset management companies.

Consequently, the fact that the service is automated does not require different treatment from that which would be applied to the provision of investment advice or management of a portfolio in a traditional manner. The point is to distinguish between the provision of investment services (which trigger licensing requirements) and technological solutions/platforms which support the rendering of the licensed service.

3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers

As cutting-edge technologies are developed by Andorran financial entities to provide new and better financial and investment services to clients, some fintech initiatives are being developed by Andorran banking entities which have integrated robo-adviser platforms.

To illustrate this, as of 2 October 2017, Crèdit Andorrà, a banking entity, launched Merkaat, the first hybrid digital investment adviser in Andorra. The service enables clients to manage investment advice, execute orders, provide custody and monitor transactions, incorporating the advantages and efficiency of automated services with a team of advisers to assist clients.

Likewise, other banking entities have entered into collaboration agreements with third parties in order to provide digital wealth management solutions to end investors.

3.3 Issues Relating to Best Execution of Customer Trades

The execution of client orders is also a regulated activity in Andorra and may only be provided (with the authorisation of the AFA) by:

- banking entities;
- financial investment entities; and
- financial investment agencies.

Accordingly, other entities authorised to provide investment advice through a robo-adviser platform need the intermediation of the aforementioned entities to execute client orders (most commonly a banking entity in which the client holds a bank account).

4. Online Lenders

4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

Under the reservation activity regime, lending activity – which includes consumer credit, credit agreements relating to immovable property, factoring (with or without recourse), financing of commercial transactions (including forfeiting) and financial and non-financial leasing (renting) with or without purchase option – does involve regulatory differences based on the characteristics of the borrower (ie, from a regulatory standpoint the same treatment applies to individuals and small or large business or institutional investors), but remains reserved to banking entities.

4.2 Underwriting Processes

Following on from 1. **Fintech Market**, 2. **Fintech Business Models and Regulation in General** and 4.1 **Differences in the Business or Regulation of Loans Provided to Different Entities**, it is notable that no online lending is currently being granted in Andorra by traditional banking entities or by fintech players. Traditional banking entities have made a substantial investment in the technology applicable to their core banking business (approximately 212.3 multimillion-euro in the last six years) and have developed some automated solutions for investment services (ie, financial investment advice), as described in 3.2 **Legacy Players' Implementation of Solutions Introduced by Robo-Advisers**, although the granting of finance remains subject to conservative underwriting procedures.

4.3 Sources of Funds for Loans

The main sources for funds for loans are deposits taken from the general public (according to the last Annual Report issued by the ABA in 2018, deposits taken from the public made up

71.84% of the Andorran banking system aggregated financial liability).

Nevertheless, in recent years the Andorran banking sector has made notable efforts to diversify its financing sources, carrying out capital markets transactions (eg, structural covered bonds issuances), despite the lack of comprehensive capital markets legislation and the absence of a direct connection to secondary markets and public offering/private placement regulations. This positive stance towards the opening of new financing sources – jointly with the ongoing initiatives for creating capital markets legislation in Andorra, as the unified code regulating financial activity in Andorra – may set the tone for and contribute to the fast and integral adoption of fintech financing mechanisms, mainly by local banking entities.

In fact, there have already been some legislative initiatives to establish the basis for a peer-to-peer/crowdfunding legal regime, although these have not crystallised in statutory legislation.

4.4 Syndication of Loans

Syndicated lending is not common in Andorra and the few instances observed have mainly been related to the financing of road infrastructures or government projects. The syndication process and its structure/organisation are therefore determined on a case-by-case basis.

5. Payment Processors

5.1 Payment Processors' Use of Payment Rails

There is a narrow cliff-walk for payment processors to create/use new/independent payment rails, other than those that are already in place and run by local banking entities in Andorra, due to the predominance of the local banking players and the high cost of setting up payment-processing infrastructure, which acts as a deterrent factor/entry barrier for new players.

As the processing of payments falls within the reservation activity regime, any fintech player wanting to operate as a payment processor would be required to obtain prior authorisation from the AFA, which would entail a relatively high financial cost as well as an exhaustive administrative process. Some processors therefore act, on a case-by-case basis, under a reverse solicitation scenario or with little connection with the jurisdiction.

5.2 Regulation of Cross-border Payments and Remittances

Monetary remittance is a simple payment service regulated under the Payment Services Act. Accordingly, the provision of monetary remittance triggers licensing requirements and can only be rendered by:

- banking entities;
- payment institutions;
- electronic money institutions; and
- *La Sociedad Estatal de Correos y Telégrafos, SA* and *La Poste Société Anonyme a Capitaux Publics*, which are entities located within Andorra and authorised to operate by the AFA through the granting of the correspondent licence and under the legal recognition granted by the Payment Services Act.

As far as cross-border payments are concerned, as of 1 March 2019, Andorra became part of the Single Euro Payments Area (SEPA) payment schemes. SEPA was created to fully harmonise electronic euro payments and make it as easy and convenient for citizens and businesses across Europe to pay with one payment account and one card, as it would be in their home countries.

Overall, the integration of Andorra into the SEPA framework has allowed access to all SEPA's framework benefits for Andorran-based payers, gradually harmonising payments by means of three essential types of instrument sided with the different SEPA schemes:

- credit transfers;
- direct debits; and
- payment cards.

Euro-denominated transactions between participant countries are accordingly subject to a set of rules and uniform conditions that allow for secure, automated and uniform processing when both or one of the payer's and payee's payment services providers are located in Andorra, or one is located in Andorra and the other in any SEPA country.

6. Fund Administrators

6.1 Regulation of Fund Administrators

The specific role of fund administrator is not regulated in Andorra. The only legal reference on fund accounting and the activities of a registrar/transfer agent related to Andorran collective investment schemes is the provision regulating the functions of Andorran management companies and the delegation of functions to third parties.

The legally recognised functions of Andorran management companies are:

- asset management, which includes investment decisions and the exercise of economic and political rights;
- administrative management, which includes the NAV calculation, accounting and legal tasks, the drafting of

prospectuses and public reports, the calculation of distributable profits, compliance functions, the maintenance of the unit-holder register, and the judicial and extrajudicial representation;

- liability management, which includes acceptance of subscriptions, redemptions and transmission of the corresponding orders to the depositary, and ordering redemptions/sales of the units to the depositary;
- activities related to distribution, which include documentation (advertising materials, annual reports) and the selection of distributors; and
- advice to other management companies and the exercise of delegated functions.

Accordingly, Andorran management companies may delegate:

- administrative management;
- asset management;
- liability management (only to the depositary); and
- distribution.

Notwithstanding this, the simultaneous delegation of administrative management and asset management is not possible. Additionally, the delegation of functions must be formalised in writing and requires initial communication to the AFA. Nonetheless, when the beneficiary of the delegation is an entity located in a third country or when the delegation refers to compliance functions, calculation of NAV or accounting, prior authorisation by the AFA is required.

The AFA only authorises delegation of functions if:

- the delegation does not hinder the supervisory powers of the AFA;
- the delegation does not generate a conflict of interest;
- the Andorran management company controls the beneficiary entity or the delegation can be voided at any time by the Andorran management company;
- the beneficiary of the delegation complies with the technical standards required for the function that is delegated; and
- the beneficiary of the delegation is subject to the supervision of the AFA if it is an Andorran entity, or to the supervision of any equivalent body of the EU, the OECD or other third countries.

6.2 Contractual Terms

There are no Andorran provisions regulating the minimum contractual terms among fund advisers and fund administrators, which are regulated under the principle of party autonomy and market standards. The only legal reference is the obligation to identify any advisory agreement in the prospectus of the fund.

As far as market practice is concerned, the most common clauses to include in the agreement with the purpose of assuring performance and accuracy, concern:

- independent portfolio administration;
- prohibition of replicating advice given to other funds or third parties;
- exchange of information;
- receipt of all relevant information to provide investment advice; and
- provision of information concerning any change of circumstances or any other fact that may impact on the advice (and the agreement) or may modify the information previously obtained by the fund adviser.

6.3 Fund Administrators as “Gatekeepers”

To the extent that fund administrators may perform functions related to compliance, tax, accounting, valuation and reporting, they are obliged to comply with all applicable regulations related to anti-money laundering (if falling under its scope as obliged entities or *subjectes obligats*), inter alia, CRS, FATCA, UCITs and non-UCITs provisions, market abuse and inside information.

However, the delegation of functions does not exempt the management company from compliance with its responsibilities as determined by law.

7. Marketplaces, Exchanges and Trading Platforms

7.1 Permissible Trading Platforms

As stated in 4.3 Sources of Funds for Loans, Andorra has not yet developed specific capital markets legislation and there are not, as yet, any trading platforms.

7.2 Regulation of Different Asset Classes

There are only two classes of assets according to Andorran regulation: financial instruments and e-money.

Act 8/2013 interprets financial instruments in the widest sense of the term as:

- securities (*valors negociables*), negotiable in the capital markets, save for payment instruments:
 - (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
 - (b) bonds or other forms of securitised debt, and depositary receipts in respect of bonds; and
 - (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash

settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

- money market instruments (*instruments del mercat monetari*);
- units in collective investment schemes (*participacions d'OIC*);
- options, futures, swaps, forwards and other derivatives related to securities, currency, interest or yield rate, or other derivative instruments, financial indexes or financial measurements which may be settled physically or in cash;
- options, futures, swaps, forwards rate agreements and other derivatives related to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of default or other form of termination);
- options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility;
- options, futures, swaps, forwards and other derivatives related to commodities that may be settled physically, not otherwise mentioned in the previous paragraph and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- credit derivatives;
- financial contracts for differences; and
- options, forwards, swaps, forward rate agreements and other derivatives related to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of default or other form of termination), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in the previous paragraphs, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

As far as the definition of e-money is concerned, the Payment Services Act has transposed the same definition under PSDII.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

Despite the embryonic state of the crypto-assets regulatory regime in Andorra and the fact that there has so far been no

impact on change in the legislation, crypto-assets and the use of DLT may be a relevant turning point for the Andorran financial sector, especially if applied to its core banking business.

For the time being, cryptocurrency exchanges are not regulated in Andorra.

7.4 Listing Standards

There are no secondary markets in Andorra and, therefore, no stock exchange legislation or listing standards have yet been created.

7.5 Order Handling Rules

No order-handling rules currently apply.

However, there are some generic rules governing the execution policies of financial entities under investor protection regulation (MiFID I).

7.6 Rise of Peer-to-Peer Trading Platforms

See 4.3 Sources of Funds for Loans and 7.1 Permissible Trading Platforms.

7.7 Issues Relating to Best Execution of Customer Trades

See 7.5 Order Handling Rules.

7.8 Rules of Payment for Order Flow

See 7.1 Permissible Trading Platforms.

8. High-Frequency and Algorithmic Trading

8.1 Creation and Usage Regulations

There are currently no specific regulations on high-frequency and algorithmic trading (HFAT). The main upcoming milestone will be the implementation of the MiFIDII/MiFIR framework, currently foreseen by the latest Annex to the Monetary Agreement by 31 December 2020. Level 2 and level 3 regulatory development have still to be developed.

8.2 Exchange-like Platform Participants

At present, Andorran law has not made a ruling on exchange-like platform participants.

8.3 Requirement to Register as Market Makers When Functioning in a Principal Capacity

At present, Andorran law does not require players to register as market makers when functioning in a principal capacity.

8.4 Issues Relating to the Best Execution of Trades

In light of 7.1 Permissible Trading Platforms to 7.4 Listing Standards, no specific best execution provisions have been introduced so far for virtual assets (actius virtuals) transactions.

On a side note, Act 8/2013 (*Llei 8/2013, del 9 de maig sobre els requisits organitzatius i les condicions de funcionament de les entitats operatives del sistema financer, la protecció de l'inversor, l'abús de mercat i els acords de garantia financera*) governs the best execution regime for Andorran financial entities.

8.5 Regulatory Distinction Between Funds and Dealers

See 7.1 Permissible Trading Platforms to 7.4 Listing Standards.

8.6 Rules of Payment for Order Flow

See 7.1 Permissible Trading Platforms to 7.4 Listing Standards.

9. Financial Research Platforms

9.1 Registration

Financial research (ie, investment reports and financial analyses or other forms of general recommendations relating to transactions in financial instruments) is a regulated activity subject to the reservation activity regime (an ancillary service) within Andorra. Accordingly, this activity can only be rendered by the following Andorran licensed financial entities:

- banking entities;
- financial investment entities;
- financial investment agencies;
- asset management companies; and
- financial advisers.

There are no specific Andorran provisions regulating financial research platforms. However, if a platform is registered in Andorra (either because the provider is an Andorran licensed financial entity or the web page has an Andorran domain), it must comply with the minimum standards required by electronic contracting and consumer protection regulations.

9.2 Regulation of Unverified Information

This matter is not specifically regulated, yet must be considered embedded in the market abuse regulation framework in accordance with Act 8/2013 which is sided with MAR.

Market Abuse and Inside Information

Act 8/2013 provides a legal regime for market abuse and inside information. Specifically, this piece of legislation prohibits any

person referred to in the law who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, on their own account or on the account of a third party, either directly or indirectly, financial instruments to which that information relates. Additionally, it prohibits any person subject to such prohibition from:

- disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties; and
- recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Market Manipulation

Act 8/2013 also prohibits any person from engaging in market manipulation.

Market manipulation means dissemination of information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals regarding financial instruments, including the dissemination of rumours and false or misleading news, where the person who disseminated the rumours or news knew, or ought to have known, that the information was false or misleading. In respect of journalists acting in their professional capacity, such dissemination of information is to be assessed, taking into account the rules governing their profession, unless the persons concerned derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

Additionally, persons who produce or disseminate investment recommendations in Andorra in the course of their work in accordance with the legislation in force, their profession or their functions have to ensure, with reasonable care, that the information destined for the distribution channels or the public is fairly presented and includes the interests or conflicts of interests existing over the financial instruments to which the information relates.

Any infringement of the prohibitions or requirements laid down in accordance with this legislation can be sanctioned.

9.3 Conversation Curation

In Andorra, platforms take the form of blogs, where reports are published without the possibility of interaction among investors. The only channel of communication is between the entity and the investor or through social media.

9.4 Platform Providers as “Gatekeepers”

As platform providers must take the form of Andorran licensed financial entities, they are bound by Act 8/2013 with regard to market abuse and inside information.

Accordingly, they must report to the AFA, without delay, if they reasonably suspect that a transaction might constitute market abuse. To this end, every entity must appoint persons responsible for making these communications and notify the AFA of their identity.

10. Insurtech

10.1 Underwriting Processes

In accordance with Act 12/2017, 22 June, on regulation and supervision of insurance and reinsurance companies in Andorra (*Llei 12/2017, del 22 de juny, d'ordenació i supervisió d'assegurances i reassurances del Principat d'Andorra – Insurance Act*), the players involved are:

- (re)insurance companies, insurance brokerages (*corredoria d'assegurances*); and
- insurance agents (agents).

Despite the fact that insurance is a regulated activity in Andorra which must be rendered by an Andorran-authorized (re)insurance company, there is also the option to render some insurance services by the intermediation of an insurance brokerage or an agent, which requires prior inscription in a specific registry provided by the AFA for this purpose.

The process of evaluating the risk of insuring (ie, underwriting) is not expressly regulated in the Insurance Act. Nonetheless, it could be deemed as an ancillary or preparatory activity.

10.2 Treatment of Different Types of Insurance

Andorra passed the Insurance Act in June 2017 and in December of the same year passed the regulation to complete the first part of the process of adaptation of Andorran law to the EU's new insurance regime. This Act vests the AFA with supervisory authority over the insurance and reinsurance market.

The new legal framework assumes the conditions and the background of the current Andorran model, with peculiarities derived from the limited size of the sector, and introduces some essential changes to guarantee the transparency and solvency of the sector in line with the provisions of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II).

As far as the different types of insurance are concerned, Andorran law establishes that life and non-life insurance and reinsurance companies must, on an annual basis, issue reports in connection with the applicability of the Insurance Act.

Furthermore, different types of insurance and reinsurance are not treated differently in Andorra insofar as the Insurance Act does not provide different sanctions depending on the type.

11. Regtech

11.1 Regulation of Regtech Providers

Regtech providers are not specifically regulated in Andorra and, for the time being, there is no draft bill which establishes the legal status of new players.

However, the compliance function (in-house and outsourcing) and lawyers' exercise of their profession are regulated.

Andorran financial entities could therefore solicit the rendering of regtech solutions to third parties as being complementary to in-house compliance functions, or even outsource compliance functions to a third party as a critical or important operational function (in accordance with Act 8/2013). Nevertheless, the following requirements must be considered:

- the outsourcing must not result in the delegation by senior management of its responsibility;
- the relationship and obligations of the entity towards its clients must not be altered;
- the conditions with which the entity must comply in order to be authorised, and to remain so, must not be undermined; and
- none of the other conditions, subject to which the entity's authorisation was granted, must be removed or modified.

The law also requires that Andorran financial entities exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any investment services or activities.

11.2 Contractual Terms to Assure Performance and Accuracy

There is no regulation in Andorra specifically applicable to regtech. Accordingly, the contractual terms imposed are dictated by industry custom and on the basis of the principle of party autonomy. Most common are:

- data protection clauses to prevent the leakage of sensitive information;

- transparency and regulatory compliance clauses requiring disclosure of information about clients;
- contractual clauses imposed to prevent money laundering and terrorism financing (ie, scoring clauses); and
- contractual duties to inform the Andorran regulators of suspicious and unlawful behaviour.

11.3 Regtech Providers as “Gatekeepers”

Regtech providers' fulfilment of a “gatekeeper” role depends on the nature of the entity and the contractual terms agreed by the parties. If the regtech providers take the form of Andorran financial entities, they must comply with investor protection and market abuse regulations. If the regtech providers are considered obliged persons according to anti-money laundering and terrorism financing regulations, they must comply with these regulations, and their obligations and responsibilities will be identified in the corresponding agreement.

12. Blockchain

12.1 Use of Blockchain in the Financial Services Industry

The blockchain regime is on the verge of being implemented in the Andorran legal framework through the initiative of some players mentioned in **1.1 Evolution of the Fintech Market** (ie, the Andorran government, ACTUA and the AndBlockchain Association).

To this extent, Andorra no longer has a wait-and-see approach, and is establishing a regulatory framework to set out clearly the game rules for public authorities, investors and new players.

The initiative will be underpinned by three pillars:

- digital identity and validating nodes;
- innovation and sandbox; and
- virtual assets.

12.2 Local Regulators' Approach to Blockchain

The AFA has aligned its actions in some specific issues regarding cryptocurrency investments with those of the regulators in neighbouring jurisdictions (ie, CNMV in Spain and ESMA for the EU) as to the issuance of warnings in the interest of investor protection.

It will be interesting to see how the role of other regulators or supervisors (ie, UIFAND and the Andorran Data Protection Agency) will evolve in a new technological environment.

12.3 Classification of Blockchain Assets

Even though there is no generally recognised classification of virtual assets, it is expected that Andorra will base its own approach to categorisation on the underlying economic function of the token, namely:

- payment tokens;
- utility tokens; and
- asset tokens.

12.4 Regulation of “Issuers” of Blockchain Assets

To the extent that there are no secondary markets and public offering/private placement regulations within Andorra, the main challenge will be to integrate the regulation of initial sales of blockchain assets into the Andorran framework.

12.5 Regulation of Blockchain Asset Trading Platforms

See 12.4 Regulation of “Issuers” of Blockchain Assets.

12.6 Regulation of Invested Funds

No collective investment schemes investing in blockchain assets appear to have been authorised and registered so far by the AFA.

12.7 Virtual Currencies

At present, Andorran law is silent about this particular point.

12.8 Impact of Privacy Regulation on Blockchain

As Andorra is not a member of the EU, the applicability of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data is limited. Nonetheless, the GDPR provides an extraterritorial approach applicable in any third country (such as Andorra) when personal data is processed by an entity not located in the EU, but where the processing activity:

- affects an EU resident; and
- is related to the offering of goods or services to the interested party in the EU.

To this end, as blockchain activity embeds the provision of services, the GDPR shall be applicable in Andorra when the processing activities affect an EU resident.

Sometimes blockchain services are provided without entering into an agreement between the parties regulating data protection obligations. Therefore, the entity or the company providing such services must give advance warning to the interested parties, before transferring their personal data with prior consent and under their responsibility. In any case, the entity must

explain the legal basis for the processing of the data concerned. Otherwise, the company or the entity engaged in the processing activity will not be able to prove that they have been proactive, as required in the GDPR provisions.

Act 15/2003, of 18 December, about personal data protection (*Llei 15/2003, del 18 de desembre, qualificada de protecció de dades personals* – Data Protection Act) is applicable to the creation of files and the treatment of personal data by those responsible for the processing who are domiciled in Andorra, or incorporated in accordance with Andorran laws. Likewise, it is applicable to the data treatment carried out by those responsible for processing, but not domiciled in Andorra or not incorporated in accordance with Andorran laws, when they use means of treatment located within Andorra. With regard to the exercise of data protection rights stipulated in the Data Protection Act, there is a particular interpretation in relation to blockchain services specifying that:

- the rectification right could be limited, to the extent that personal data is adhered to an irreversible block;
- the cancellation right is not feasible for identical reasons (however, new data can be entered into the chain); and
- the opposition right is not applicable, since anyone who introduces their data into the chain voluntarily, cannot defend their privacy.

Another point is whether personal data is irreversibly spread in the chain.

As far as privacy regulation is concerned, the entity responsible for the processing must adopt the necessary technical and organisational measures to guarantee the confidentiality of the personal data. In addition, they must prevent disclosure or unauthorised access to the personal data from occurring.

13. Open Banking

13.1 Regulation of Open Banking

Act 27/2018, on payment services and electronic money, transposes the PSDII enabling new fintech companies or third parties to enter payment services, namely: account information service providers and payment initiation service providers.

Despite this, to the extent that they are still fairly novel, the use of APIs has not yet materialised. It remains to be seen how open banking evolves in Andorra (for both Andorran financial entities and new players).

13.2 Concerns Raised by Open Banking

Open banking technology allows more transparency concerning the processing of personal data and users are entitled to decide when such data can be provided to third parties. This determines that personal data belongs to the user and not to the companies responsible for its treatment. Therefore, customers can decide the use and the destination of their personal data. At the same time, interested third parties must be duly authorised and hold a certificate to obtain the personal data of users.

Cases & Lacambra is a client-focused international law firm with a cornerstone financial services practice. With a presence in Europe and America, the firm has a tested track record in complex transactions involving the financial sector, special situations, financial markets regulations, cross-border disputes and transactions with relevant tax aspects. Its financial services

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