
CHAMBERS GLOBAL PRACTICE GUIDES

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UAE: Law & Practice
and
UAE: Trends & Developments

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Law and Practice

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1. Fintech Market

1.1 Evolution of the Fintech Market

The United Arab Emirates (UAE) has taken even greater steps since the COVID-19 pandemic to become not just a regional, but also a global, financial services hub. Fintech has been an important aspect of this. There has been significant investment in fintech start-ups in recent years and according to statistics issued by Fintech News, in the first half of 2022, investment in fintech start-ups accounted for 34% of the total capital invested in start-ups in the UAE.

The growth in the UAE's fintech space has largely been driven by initiatives from the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), the UAE's two financial free zones. Both the DIFC and ADGM serve as hubs for innovative fintechs looking to establish a Middle Eastern base. Both the ADGM and DIFC have set up their own fintech hubs, the ADGM Regulation Lab (the "RegLab") and DIFC Innovation Hub. The ADGM RegLab and DIFC Innovation Hubs are key accelerators for up-and-coming fintechs and support start-ups across the fintech spectrum, from open banking and payment services, to regtech, insurtech and wealthtech. The ADGM RegLab and DIFC Innovation Hub give fintechs access to an extensive network of investors, marketing and PR exposure, bespoke regulatory frameworks and regulatory sandbox schemes, as well as networking events. In the words of the DIFC Innovation Hub, its objective is to "raise unicorns".

The success of the UAE's fintech market can also be attributed to the responsiveness of the UAE's regulatory authorities to market developments. This is demonstrated through, for example, the issuance of Dubai's law regulating virtual assets (DVAL) and the establishment of a virtual

assets regulatory authority (VARA), dedicated to governing virtual asset-related activities in the emirate of Dubai (excluding the DIFC).

It is expected that these regulatory reforms will continue in 2023 and for the next few years. From a market perspective, a focus on developing ESG and climate finance initiatives is expected ahead of COP28 (to be hosted by the UAE at the end of 2023) and further growth in open banking, digital and instant payments, as well as buy-now-pay-later is also predicted by many. The global market slow-down evident in Europe and the US has not really hit the Middle East and North Africa (MENA) region as at the date of writing in March 2023; as such, it remains to be seen what impact this may (or may not) have on the UAE's fintech sector. Indeed, given the windfall revenue being generated through increased global oil and gas prices and the appetite of the region's sovereign wealth funds and government-related entities to invest, the outlook for 2023 remains positive.

2. Fintech Business Models and Regulation in General

2.1 Predominant Business Models

The UAE's fintech sector continues to grow and mature following an increase in the adoption of digital payments, e-commerce activity and a nascent but expanding digital banking landscape.

A wide range of actors are active in the UAE's fintech space, ranging from mature businesses to start-ups that operate across a wide range of sectors from open banking and equity crowdfunding through to insurtech, wealthtech and regtech. The predominant verticals that apply in the UAE relate to virtual assets, cryptocurrencies,

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payments (including with respect to remittances which are of disproportionately large importance in the UAE given its large expat population) and blockchain technology.

The range of companies operating in the blockchain and virtual assets markets in the UAE is growing, from crypto-asset exchanges (over 30 companies have obtained licences to date), to companies involved in digital asset mining activities, companies that offer e-wallet services as well as investment funds investing in virtual assets and blockchain projects.

2.2 Regulatory Regime

Overview

The UAE is a federation comprising seven emirates, with Dubai largely seen as the UAE's international commercial centre and Abu Dhabi being particularly important from a governmental and political perspective. Each emirate is permitted to exercise all powers not assigned to the federal level. This includes being authorised to issue its own laws and regulations.

From a financial services regulatory perspective, the UAE is best understood as comprising two categories of jurisdictions:

- “onshore UAE” – constituting the territories of the seven emirates of the UAE, including approximately forty-five economic free zones that are largely concentrated in the emirate of Dubai; and
- “offshore UAE” – constituting the financial free zones of the DIFC and ADGM. Each of the financial free zones are, from a financial services regulatory perspective, separate jurisdictions from onshore UAE. Each financial free zone has its own stand-alone rules and regulations that are largely premised on English common law and are based on

benchmarking against the rules of leading international financial centres.

Onshore UAE – Payments

In onshore UAE, the provision of payment services is generally regulated by the Central Bank of the UAE (CBUAE) pursuant to the following.

Large value payment systems regulations

This framework sets out the conditions for obtaining and maintaining a licence to operate a large value payment system, which is defined as “a clearing and settlement system that is designed primarily to process large-value and/or wholesale payments typically among financial market participants (so-called wholesale payments) or involving money market, foreign exchange or many commercial transactions, excluding bilateral clearing and settlement arrangements and relationships which do not constitute a ‘system’”.

Retail payment systems regulation

This framework applies to designated retail payment systems providers, setting out (amongst other things):

- the CBUAE's key criteria for designating a retail payment service;
- the licensing and designation process for retail payment services; and
- the ongoing requirements of designated retail payment services.

Retail payment services and card schemes regulation (the “RPSCS Regulation”)

This framework applies to retail payment service providers and card scheme providers. It sets out the conditions applicable to the granting and maintaining of licences to carry out retail payment services and card schemes in onshore

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UAE, the ongoing obligations of retail payment service and card scheme providers as well as the powers of the CBUAE with respect to the supervision of retail payment service and card scheme providers and the ongoing reporting requirements for card schemes.

Onshore UAE – Virtual Assets

In onshore UAE, virtual assets fall under the jurisdiction of the SCA, VARA and CBUAE.

SCA

The SCA is responsible for overseeing the regulation of virtual assets and related services pursuant to Cabinet Decision No 111 of 2022 (the “VA Decision”). According to the VA Decision, any person that wishes to carry out virtual asset-related activities must obtain a licence from the SCA (or the competent authority at emirate level (where one exists)).

VARA

The VARA is the authority responsible for regulating, supervising and overseeing virtual assets and related activities in the emirate of Dubai (excluding the DIFC), in accordance with the DVAL and its Executive Regulations and rulebooks.

CBUAE

The CBUAE is responsible for regulating activities relating to payment tokens (ie, stable coins) pursuant to the RPSCS Regulation, while the CBUAE’s Stored Value Facilities Regulation (the “SVF Regulation”) regulates crypto and virtual assets insofar as they may be accepted in exchange for the storage of value.

Offshore UAE – Virtual Assets and Payment Services

In the ADGM, the Financial Services Regulatory Authority (FSRA) regulates virtual assets

and virtual asset-related activities. The FSRA issued its “Virtual Asset Framework” in 2018. This sets out provisions targeting a range of risks associated with virtual asset-related activities, including risks relating to money laundering and financial crime, consumer protection, technology governance, custody and exchange operations. The FSRA subsequently issued its “Guidance – Regulation of Virtual Asset Activities in ADGM” to provide further support to persons when carrying out virtual asset-related activities in the ADGM to interpret its rules and regulations. Payment services are also regulated by various ADGM regulations and FSRA rules.

In the DIFC, the DFSA regulates virtual assets and the provision of connected financial services. The DFSA’s regulatory framework is set out in the DFSA Rulebooks, which distinguish between investment tokens as either security tokens or derivative tokens, and crypto tokens. The provision of payment services is also primarily regulated in the DFSA Rulebooks.

2.3 Compensation Models

The compensation models that fintechs can utilise vary depending on the nature of a fintech’s business and the regulatory rules applicable to the fintech. Certain restrictions may apply depending on the sector in which a fintech operates.

The authors are not aware of any specific regulatory restrictions in onshore UAE or offshore UAE with respect to the compensation models that industry participants may use to charge customers. However, where a fintech chooses to provide Islamic finance, it will be required to comply with the principles of Sharia in determining its compensation model, which will include considering matters such as the charging of interest.

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2.4 Variations Between the Regulation of Fintech and Legacy Players

Regulators in onshore UAE and offshore UAE do not differentiate between fintech participants and legacy participants per se. Differences in regulatory regimes are generally based on the risks associated with the activity being carried out. For example, a bank will attract higher levels of regulatory oversight and supervision than a payment services business offering payment initiation services and account information services.

2.5 Regulatory Sandbox

In onshore UAE, the CBUAE has recently established a regulatory sandbox for the insurance sector (discussed further at section 10. Insurtech) and has signed two separate memoranda of understanding with the ADGM and DIFC to introduce a co-sandbox programme to permit fintechs to test innovative solutions under the existing sandbox programme.

The ADGM offers the ADGM RegLab, which was established in 2019. A regulatory sandbox forms part of the ADGM RegLab's offering that provides a controlled environment for fintech participants to test and develop their innovative fintech solutions. In the RegLab, regulatory requirements are applied based on a participant's business model and risks and on a case-by-case basis.

In the DIFC, the DFSA operates a licensed sandbox known as the DFSA Innovation Testing Licence Programme. The DFSA Innovation Testing Licence Programme allows participants to: (i) test new and innovative financial products, services and business models; and (ii) benefit from adaptations to the regulatory framework on a case-by-case basis.

2.6 Jurisdiction of Regulators

The key regulatory authorities responsible for administering the UAE's financial services frameworks and for regulating the UAE fintech market are the CBUAE, SCA, VARA, FSRA and DFSA. A brief description of each of their roles and objectives is set out below.

Onshore UAE

- The CBUAE – regulates banks, finance companies, payment service providers, stored value facilities providers, exchange businesses and insurance companies.
- The SCA – regulates markets, listed companies, securities brokers, virtual asset service providers and the trading of commodities.
- The VARA – regulates virtual asset-related activities in the emirate of Dubai, excluding the DIFC.

Offshore UAE

- The FSRA – is the financial services regulator in the ADGM. It supervises all banks, investment firms, securities traders and re-insurers that operate within the ADGM.
- The DFSA – is the financial services regulator in the DIFC. It supervises all banks, investment firms, securities traders and re-insurers that operate within the DIFC.

2.7 Outsourcing of Regulated Functions

Regulated financial service providers (SPs) are permitted to outsource certain functions to third-party vendors. In doing so, SPs retain responsibility for the outsourced function and must maintain oversight over the third-party vendor. The level and precise requirements of this oversight depend on the nature of the outsourced function and the SP.

In general, where an SP outsources one of its functions, it will be required to put in place an

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appropriate agreement governing its commercial relationship with the third-party vendor that includes audit rights in favour of the SP. Under the DFSA General Rulebook Module and the FSRA General Rulebook (each “GEN”), an outsourcing agreement must also require the third-party vendor to deal with the DFSA or FSRA (as applicable) in an open and co-operative way. Further contractual requirements to be set out in the outsourcing agreements of banks are provided for in the CBUAE’s Outsourcing Regulations and Standards for Banks, which largely centre around access to the bank’s data by the third-party vendor. A bank’s outsourcing agreement must establish (among other things):

- that the bank retains ownership of the data and unfettered access to it;
- that the data is adequately safeguarded (through confidentiality provisions and provisions relating to data destruction following termination);
- the extent to which subcontracting is permitted; and
- data breach notification requirements.

In all cases, the UAE’s regulatory authorities require SPs to take a risk-based approach to outsourcing functions and to carry out appropriate diligence on the selected third-party vendor with which the vendor will be required to engage.

2.8 Gatekeeper Liability

SPs are required to comply with certain conduct of business requirements.

They are also required to adhere to standards in respect of the promotion of financial products and services. For instance, DFSA GEN requires that all financial promotions: (i) are clear, fair and not misleading; (ii) indicate who the SP is; (iii) are directed at the intended category of cus-

tomers or clients; (iv) provide fair, unbiased and balanced information; and (v) when directed at retail clients, contain a prominent warning that past performance is not necessarily a reliable indicator of future performance. The VARA has issued its own Marketing Regulations governing the promotion of virtual assets in Dubai that contain similar advertising standards.

Beyond this, fintechs are responsible for complying with obligations set out under the UAE’s anti-money laundering and the countering of terrorist financing (AML/CTF) laws. This includes, amongst other things, carrying out know-your-customer diligence as well as monitoring for and reporting suspicious transactions. Where a fintech fails to comply with obligations under AML/CTF laws, they will be liable in accordance with the liability provisions in such laws.

2.9 Significant Enforcement Actions

The enforcement actions by regulatory authorities have increased in recent years following the UAE’s addition to the Financial Action Task Force’s (FATF) grey list. Such increased enforcement has also been evident within the UAE’s crypto and virtual asset and payment services verticals. Onshore UAE’s regulatory authorities have typically wide-ranging enforcement powers and have the ability to impose a wide range of penalties from fines and censure for less severe breaches to imprisonment for the most serious offences such as those connected to financial crime. Offshore UAE’s regulatory authorities’ powers do not include criminal powers, but otherwise mirror those of onshore UAE’s regulatory authorities. In practice, the UAE is a jurisdiction where co-operation with relevant authorities is required on an ongoing basis in order to operate a business.

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By way of example, the Executive Regulations relating to the DVAL – the Virtual Assets and Related Activities Regulations 2023 – include the following penalties (among others):

- written reprimands;
- enforcement notices requiring non-compliance to be rectified within a specified period of time;
- licence restrictions, suspensions or revocations; and
- fines.

The VARA has already revoked licences and the CBUAE has demonstrated its increased appetite for enforcement by issuing various sanctions against finance companies and exchange houses.

2.10 Implications of Additional, Non-financial Services Regulations

Onshore UAE

Data protection

Federal Decree Law No 45 of 2021 (the “Personal Data Protection Law”) is onshore UAE’s first written data protection law of general application. The Personal Data Protection Law is inspired by the EU’s General Data Protection Law (GDPR) but is lighter touch. As of the date of this note, the Executive Regulations, which will flesh out the provisions of the Personal Data Protection Law, are yet to be released.

Cybercrime

Federal Decree Law No 34 of 2021 Concerning the Fight against Rumours and Cybercrime (the “Cybercrime Law”) sets out a wide range of offences, including in relation to illegal digital content and illegal uses of information technology. This is a broad law that goes considerably further than equivalent regulation in this area in western Europe and the US.

Offshore UAE

Data protection

Both the DIFC and ADGM have had consolidated data protection regimes for many years and both were recently reformed. They bear a significant resemblance to the GDPR, albeit being more business friendly and somewhat lighter touch.

2.11 Review of Industry Participants by Parties Other than Regulators

There are a growing number of formal industry bodies emerging in the fintech space such as the MENA Fintech Association. These industry bodies have an increasingly important role to play with respect to representing industry participants, communicating with regulators to address concerns and seeking guidance in respect of, or input with respect to, planned regulations within the fintech space. For example, they will often provide input at the consultation phase of proposed regulations.

The DIFC Innovation Hub and ADGM RegLab also oversee the fintech market and can influence the rules and regulations within the industry as an informal network by interpreting the practical application of such rules and regulations, thereby influencing how the market operates.

2.12 Conjunction of Unregulated and Regulated Products and Services

This will depend on the nature of the contemplated business activities. However, it is generally expected that corporate entities maintain a degree of separation between regulated and unregulated business activities to ensure that they can ring-fence those which are regulated and have higher supervision requirements from those which are not. For instance, in the ADGM it is prohibited to combine financial and non-financial services on the licence of a single entity.

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2.13 Impact of AML Rules

AML/CTF is regulated in the UAE by the following laws:

- Federal Decree Law No 20/2018 (as amended);
- Cabinet Decision No 10/2019 (as amended);
- Cabinet Resolution No 58/2020; and
- Federal Law No 7/2014, collectively, the “UAE’s AML/CTF Laws”.

Financial institutions and virtual asset service providers fall within the scope of the UAE’s AML/CTF Laws. As such, where fintechs come within the scope of the definition of a financial institution or virtual asset service provider, they will also fall within the scope of the UAE’s AML/CTF Laws. This will, however, need to be assessed on a case-by-case basis depending on the business and services offered by the fintech in question. In addition, certain criminal offences may be committed by a fintech under the UAE’s AML/CTF Laws, irrespective of what services are being offered.

Fintechs regulated by the SCA are required to ensure compliance with the standards and obligations set out in the UAE’s AML/CTF Laws. This is confirmed, for instance, by Decision No 13/RM/2021 (the “SCA Rulebook”), which requires licensed bodies to meet the requirements of the “Law of Anti-Money Laundering and Combating the Financing of Terrorism and Illicit Organisations and its implementing regulations”. The SCA has also issued a number of circulars and notices governing various aspects of AML/CTF compliance, including the freezing and unfreezing of accounts and the implementation of targeted financial sanctions. This is in addition to any standards issued by the CBUAE in respect of FATF guidance. Furthermore, both the VA Decision and DVAL are explicit in requiring vir-

tual asset service providers licensed thereunder to comply with the obligations of the UAE’s AML/CTF Laws.

Pursuant to Article 71(1) of the DIFC Regulatory Law 2004, SPs are required to comply with the UAE’s AML/CTF Laws. The Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module to the Dubai Financial Services Authority Rulebook also applies to SPs in respect of their activities carried on, in, or from the DIFC.

Similarly, the UAE’s AML/CTF laws also apply to SPs in the ADGM. In addition, the ADGM’s Anti-Money Laundering and Sanctions Rules and Guidance Module to the Financial Services Regulatory Authority Rulebook sets out further requirements for regulated financial service providers to ensure compliance with the provisions of the UAE’s AML/CTF Laws. This includes implementing appropriate AML/CTF policies and procedures, establishing detection and reporting mechanisms for suspicious customers and transactions, and maintaining appropriate records of such transactions.

3. Robo-advisers

3.1 Requirement for Different Business Models

Robo-advisers are found in the UAE’s investment and asset management space. According to statistics published by Statista, the assets under management in the UAE’s robo-adviser market segment are projected to reach nearly USD2 billion by the end of 2023. Although business models will largely depend on the particular business proposition being offered, hybrid models are common, combining traditional asset and investment management services with automat-

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ed solutions in respect of assessing risk appetite or providing algorithm-based financial planning.

Arranging, advising and dealing in investments, as well as managing assets, constitute regulated financial activities in the ADGM and DIFC. Similarly, promotion and carrying on the activities of a financial adviser are licensed financial activities under the SCA Rulebook. Where companies wish to carry on such services, including through robo-advisers, they will fall within the scope of these licensing regimes. In 2019, the FSRA issued supplementary guidance for obtaining regulatory authorisation to conduct digital investment management (robo-advisory) activities in the ADGM. The guidance lays down the applicable permissions (as stated above) that a company will need to apply for in order to carry on digital investment management activities, along with the key controls surrounding technology and algorithmic governance that a digital investment manager will need to implement.

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

Incumbent legacy players within the UAE investment management market use robo-advisers largely in the context of assessing the risk appetite of clients at a retail level and providing investment advice on the basis of such risk assessment.

3.3 Issues Relating to Best Execution of Customer Trades

Depending on the nature of the regulated financial activity offered, best execution principles will also apply to companies providing robo-adviser services. Such best execution principles require companies to take reasonable care to determine the best execution available for an investment under the prevailing market conditions and to offer and deal in prices and conditions that are

no less advantageous to the relevant client than the prevailing market conditions. Best execution principles are largely set out in the Conduct of Business Rulebook Modules (each "COBS") issued by both the DFSA and FSRA. Guidance on best execution provided by the DFSA states that when determining best execution, regard should be had for direct and indirect costs, the relevant order type and the size, settlement arrangements and timing of that client's order that could affect decisions on when, where and how to trade. Requirements to achieve best execution prices in favour of clients are also set out in the SCA Rulebook.

4. Online Lenders

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

In onshore UAE, the CBUAE has issued regulations setting out the protections that apply with respect to the provision of finance to consumers and small to medium-sized enterprises (SMEs). However, the authors are not aware of differences in the business or regulation of loans to entities, including small businesses, etc.

The CBUAE's Consumer Protection Regulations, issued in November 2020, provide that financing to individuals must be provided in a responsible manner, to prevent over-indebtedness and support economic stability. In order to achieve this, the Consumer Protection Regulations set out various measures that must be implemented, including (amongst other things):

- ensuring credible and independent information regarding the financial situation of the consumer has been obtained;
- not providing excessive credit; and

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- issuing credit on the basis of the consumer's consent.

The SME Market Conduct Regulation sets out materially the same requirements in respect of SMEs as the Consumer Protection Regulations, with a limited number of differences.

4.2 Underwriting Processes

The underwriting process adopted by an online lender will depend on its business and internal risk management framework.

4.3 Sources of Funds for Loans

The access to sources of funds for loans will depend on the nature and maturity of the online lender. At the early stages of business, online lenders may seek seed investment, for example, from VC firms. They may also seek to fundraise through peer-to-peer lending. In expansion stages, and where an online lender has established a market presence, it may seek a fresh capital injection through a secured or unsecured debt facility. Depending on the nature of the online lender, challenger banks may also use consumer deposits to fund loans. At all stages, sovereign wealth is an important source of funding within the region. That being said, the source of funds for each online lender will depend on the nature of its business, its maturity and target customers.

4.4 Syndication of Loans

We are not aware of any syndications for online loans. These loans are typically small, short-term checkout loans which do not require syndication.

5. Payment Processors

5.1 Payment Processors' Use of Payment Rails

There is no explicit requirement for payment processors to use existing payment rails or to create new ones. Payment processors commonly use already-established payment rails.

5.2 Regulation of Cross-Border Payments and Remittances

In onshore UAE, cross-border payments are regulated by the CBUAE's. The RPSCS Regulation requires providers of cross-border transfer services to obtain a licence in order to carry on such activities in the UAE. Cross-border transfer services are defined as "a Retail Payment Service for the transfer of funds in which the payment service providers of the payer and the payee are located in different jurisdictions or countries". The RPSCS Regulation sets out various regulatory capital requirements, consumer protection, data protection, compliance and governance, AML/CTF and technology risk and information security requirements with which licensed providers must comply.

Cross-border payments are further facilitated by cross-border payment systems. Two of the main cross-border payments systems in the region are AFAQ and Buna. Membership and participation in these systems follows an agreed set of requirements, rules and specified standards that govern the relationship between the participants and the business rules affecting the related transactions, such as the currency or currencies of the transaction, the exchange rate and the settlement institute.

As noted and described in **5.1 Payment Processors' Use of Payment Rails**, the FSRA and DFSA respectively regulate the provision of

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money services in the financial free zones. These licensed financial activities capture the provision of cross-border payment services.

6. Fund Administrators

6.1 Regulation of Fund Administrators

Fund administrators are regulated in onshore UAE by the SCA and in offshore UAE by the FSRA in the ADGM and the DFSA in the DIFC respectively. The SCA Rulebook prohibits the carrying on of a financial activity without a licence issued by the SCA. This includes the provision of “administrative services of an investment fund” which the SCA Rulebook defines as a financial activity involving the carrying out of business assistance services that support an investment fund. As such, a person wishing to carry on such services in onshore UAE will require the approval of the SCA. The FSRA and DFSA also classify “acting as the administrator of a collective investment fund” and “providing fund administration” respectively as regulated financial activities. As in onshore UAE, it is prohibited carry on a regulated financial activity in the ADGM or DIFC without obtaining a licence from the relevant regulator. As such, fund administrators must undergo the FSRA or DFSA (as applicable) licensing process in order to provide their services within the respective financial free zone.

6.2 Contractual Terms

With respect to the ADGM, as stated in Rule 17.1.4, the FSRA’s Fund Rules provide that a fund administrator of a domestic fund (excluding a qualified investor fund) or of a foreign fund managed by an authorised fund manager, must have a delegation agreement in place with the fund manager or trustee of the fund. This delegation agreement must meet various regulatory

requirements including containing provisions that prevent the fund administrator from holding or controlling monies or assets belonging to third parties in connection with such administration, except in very limited circumstances. The FSRA expects such a delegation agreement to include, at a minimum, the following provisions, as set out in the guidance to Rule A1.2.1 of the FSRA’s Fund Rules:

- unambiguous descriptions and definitions of the activities and functions to be provided by the fund administrator and the duties to be performed by both parties;
- an agreed standard in respect of resources and services, supported as necessary by performance measures in accordance with the applicable rules;
- the requirement for regular detailed reporting in a specified frequency from the fund administrator in respect of its duties and activities;
- provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the fund administrator to fulfil its duties; and
- the requirement for an annual review (at a minimum) of the performance of the functions by the fund administrator.

Equivalent obligations exist under the DFSA’s Collective Investment Rules (CIR), which also stipulate that a fund administrator of a domestic fund (excluding a qualified investor fund) for which it is providing fund administration must have a delegation agreement that meets the requirements set out in the CIR with the fund manager or trustee of the fund. The DFSA imposed equivalent provisions to those listed above, which are contained in the guidance to Rule A1.2.1 of the CIR.

7. Marketplaces, Exchanges and Trading Platforms

7.1 Permissible Trading Platforms

Onshore UAE

SCA

The establishment and operation of trading platforms and exchanges is regulated by the SCA. While Federal Decree Law No 4/2000 concerning the Emirates Securities and Commodities Authorities Market (the “SCA Market Law”) is not prescriptive in terms of the type of platforms permitted, it defines a market as “a securities and commodities market licensed in the [UAE] by the [SCA]”.

VARA

While the DVAL and its supplementary regulations and rulebooks are not prescriptive in terms of the types of platforms permitted in the emirate of Dubai in respect of trading virtual assets, the DVAL defines a virtual asset platform as “a centralised or decentralised digital platform, managed by a virtual asset service provider, through which virtual assets are sold, bought, traded, offered, issued, kept and settled and their trading is cleared through the distributed ledger technology”.

Furthermore, carrying on the provision of services of exchange between one or more forms of virtual assets is a regulated activity under the DVAL. Exchange services are defined by the Virtual Asset and Regulated Activities Regulation 2023 as: (i) conducting an exchange, trade or conversion between virtual assets and fiat currency; (ii) conducting an exchange, trade or conversion between one or more virtual assets; (iii) matching orders between buyers and sellers and conducting an exchange, trade or conversion between virtual assets and fiat currency or

one or more virtual assets; or (iv) maintaining an order book in furtherance of (i), (ii) or (iii).

Offshore UAE

DIFC

Various trading platforms and marketplaces are permissible in the DIFC. In this regard, the DFSA’s GEN sets out the following regulated activities: (i) operating an exchange; and (ii) operating an alternative trading system.

Operating an exchange means operating a facility which functions regularly and brings together multiple third-parties buying and selling interests in investments, in accordance with its non-discretionary rules in a way that can result in a contract in respect of investments admitted to trading or traded on the facility.

DFSA guidance provides that the financial services of operating an exchange only applies in relation to investments. A person wishing to operate a facility for the trading of crypto tokens will, therefore, need to use a multilateral trading facility (MTF) and obtain an endorsement on its licence that permits it to operate an MTF.

Operating an alternative trading system means: (i) operating an MTF; or (ii) operating an organised trading facility (OTF). A person operates an MTF if that person operates a system which brings together multiple third parties buying and selling interests in investments or crypto tokens, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such investments or crypto tokens. On the other hand, a person operates an OTF if that person operates a system which brings together multiple third parties buying and selling interests in investments, in accordance with its discretionary rules, in a way that results in a contract in respect of such investments.

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ADGM

Similar trading platforms to those permitted in the DIFC are also allowed to operate in the ADGM. Under the FSRA's Financial Services and Markets Regulation 2015 (FSMR), operating a trading platform will constitute the regulated financial activity of "operating an MTF or OTF". Specifically, operating an MTF or OTF on which financial instruments or virtual assets are traded are each considered separate regulated activities. Carrying on any other ancillary activities deemed suitable by the FSRA for the MTF or OTF to conduct is also its own regulated financial activity.

7.2 Regulation of Different Asset Classes

With the exception of virtual assets regulated separately by the VARA, the application of the UAE's regulatory regimes are not generally premised on distinctions between asset classes (although certain regulatory rules may apply in respect of a particular asset class), but rather on the type and nature of the financial activity being conducted.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

The emergence of virtual asset and cryptocurrency exchanges has brought about significant regulatory reforms in the UAE. Both the FSRA and DFSA have amended their regulatory frameworks over the last few years in order to bring virtual assets, investment tokens and crypto tokens within the scope of regulation. Most notable, however, is the establishment of an entirely new regulatory framework and authority in the emirate of Dubai through the VARA and DVAL, dedicated to the licensing and supervision of virtual assets and related activities. The activities captured under the VARA jurisdiction include the establishment and operation of cryptocurrency exchanges, amongst other things.

7.4 Listing Standards

Various listing standards exist in order to safeguard and maintain market confidence and ensure a fair, informed and orderly market. For instance, both the DFSA and FSRA set out the following listing principles in their Markets Rulebooks:

- a listed entity must take reasonable steps to ensure that its senior management and any other relevant employees understand and comply with their responsibilities and obligations;
- a listed entity must take reasonable steps to establish and maintain adequate policies, procedures, systems and controls to enable it to comply with its obligations;
- a listed entity must act with integrity towards holders and potential holders of its listed securities;
- a listed entity must communicate information to holders and potential holders of its listed securities in such a way as to avoid the creation or continuation of a false market in such listed securities;
- a listed entity must deal with the competent regulatory authority in an open and co-operative manner; and
- a listed entity must ensure that it treats all holders of the same class of its listed securities equally in respect of the rights attaching to such listed securities.

The FSRA's Market Rules set out the following additional listing principles:

- the structure and operations of a listed entity must be appropriate for it; and
- a listed entity must ensure that the terms that apply to each class of its securities are appropriate and fair, taking into account voting and other rights.

7.5 Order-Handling Rules

The SCA Rulebook sets out various order handling requirements, including in respect of receiving, aggregating and executing trade orders as well as in regards to the notification of the execution of a trade order and in its settlement. Both the FSMR and DIFC Markets Law 2012 set out provisions in respect of stop orders which may be issued by the FSRA and DFSA respectively in regards to listed securities (or crypto tokens in the case of the DIFC).

7.6 Rise of Peer-to-Peer Trading Platforms

Peer-to-peer trading is in its nascent stages in the UAE; however, the key challenge posed by peer-to-peer trading is the relative lack of regulatory oversight in comparison to traditional trading platforms or exchanges, which operate in a highly regulated environment. As in other jurisdictions, such lack of regulation also raises concerns with respect to AML/CTF and adequate KYC. This is a particularly pertinent point, given the regulatory authorities' active enforcement appetite in this space on account of the UAE's addition to the FATF grey list on 4 March 2022.

7.7 Issues Relating to Best Execution of Customer Trades

Please see 3.3 Issues Relating to Best Execution of Customer Trades for applicable information regarding best execution practices of customer trades.

7.8 Rules of Payment for Order Flow

Payment for order flow is a compensation model under which a broker is paid a small commission for routing client trade orders to a particular market maker. A market maker matches buy and sell orders to execute a trade. The SCA Rulebook provides that in executing trade orders, a broker must refrain from using the trading data,

transactions and orders of its clients to achieve special benefits or gains. This indicates that the permissibility of payment for order flows in onshore UAE will be limited.

7.9 Market Integrity Principles

With respect to onshore UAE, the SCA Market Law sets out specific provisions in respect of disclosure and transparency which must be adhered to.

In the ADGM, there is a prohibition on market abuse, which includes insider trading, dealing or disclosing inside information, and effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance or the dissemination of information which is likely to create a false or misleading impression, amongst other things. This is supplemented by the FSRA's Code of Market Conduct, which is intended to prevent market abuse by providing further clarity about what activities the FSRA might regard as constituting market abuse.

Similarly, the DIFC's Markets Law 2012 sets out a prohibition on various forms of market abuse, including: (i) fraud and market manipulation; (ii) making false and misleading statements, conduct and distortion; (iii) deception and use of fictitious devices; (iv) insider dealing; (v) providing insider information; (vi) inducing persons to deal; and (vii) misuse of information. Again, the provisions on market abuse set out in the Markets Law 2012 are supplemented by the DFSA's Code of Market Conduct, which also elaborates on the conduct, which may fall into the categories of market abuse set out at items (i) to (vii). Finally, the VARA has issued its Market Conduct Rulebook pursuant to the Virtual Assets and Related Activities Regulations 2023.

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The Market Conduct Rulebook sets out provisions in respect of disclosure and transparency and requires virtual asset service providers to adhere to Virtual Asset Standards in providing and/or offering virtual asset activities.

8. High-Frequency and Algorithmic Trading

8.1 Creation and Usage Regulations

A separate regulatory regime for algorithmic and high-frequency trading does not appear to be provided for under the UAE's financial services regulatory frameworks. Such trading would be regulated generally as discussed in 7. **Marketplaces, Exchanges and Trading Platforms**.

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

There does not appear to be a requirement for principals to register as market makers under applicable UAE regulatory regimes.

8.3 Regulatory Distinction Between Funds and Dealers

The authors are not aware of funds or dealers engaging in high-frequency and algorithmic trading activities in the UAE.

8.4 Regulation of Programmers and Programming

The authors are not aware of any regulatory regime governing the development and creation of trading algorithms and other electronic trading tools in the UAE.

9. Financial Research Platforms

9.1 Registration

There is no specific registration or regulatory framework governing research platforms in the UAE. The extent to which research platforms may be subject to regulation by the UAE's various financial services authorities will depend on the nature of the service provided.

Advising on investments and financial promotion are both regulated financial activities in onshore UAE and offshore UAE. Where research platforms communicate with individuals inside the UAE in any way or by any means that could be construed as inviting, inducing or encouraging them to buy or subscribe to a financial product, this would trigger the general financial promotion prohibition set out by the FSRA, DFSA and SCA in their respective regulatory regimes and will require such research platforms to obtain a licence to carry on such activity.

By the same measure, where research platforms are seen to give advice or make recommendations in respect of the financial information provided, for instance with respect to the merits of buying, selling, holding, subscribing for or underwriting a particular financial product or service, this may constitute the regulated financial activity of advising, again triggering financial services licensing requirements in both onshore and offshore UAE.

9.2 Regulation of Unverified Information

The UAE has strict laws on such matters, the breach of which may attract the imposition of significant penalties. The scope of these laws is significantly wider than in western Europe and the US.

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The Telecommunications and Digital Government Regulatory Authority (TDRA) is the authority responsible for regulating the UAE's telecommunications and digital sectors. This includes ensuring internet content standards are enforced. In practice, it is the responsibility of Etisalat and Du, the two national telecommunications service providers licensed by the TDRA to monitor and block prohibited digital content. Such content includes (amongst many other categories): (i) impersonation; (ii) fraud; (iii) phishing; (iv) insult; (v) slander; (vi) defamation; and (vii) content promoting investment portfolios or funds and trading of stocks, currencies and metals without obtaining a licence from the competent regulatory authorities. The TDRA Internet Guidelines also set out guidelines for owners and operators of websites accessible in the UAE in respect of content standards that must be complied with, among other things.

Beyond this, Federal Decree Law No 34/2021 concerning the Fight Against Rumours and Cybercrime (the "Cybercrime Law") sets out criminal offences with respect to the dissemination or publication of various forms, content and information by electronic means. Penalties under the Cybercrime Law may range from prison sentences of between one year and 25 years and monetary fines from AED30,000 to AED5 million.

Specifically, any person that advertises, promotes or deals in any form or encourages the dealing in a virtual currency, cryptocurrency, stored value unit or any payments unit not officially recognised in the state or without a licence from the competent regulatory authority through information technology or an information network is guilty of an offence. The Cybercrime Law also contains offences against divulging, publishing, re-publishing, circulating or re-circulat-

ing fake news or false, malicious, misleading or incorrect reports or rumours.

Any person that manages, creates or uses a website or information network account to facilitate the commission of such content crimes may also be guilty of an offence under the Cybercrime Law. Moreover, any administrator that manages a website or electronic account that publishes on either thereof any content, data or information which is inconsistent with the UAE's media content criteria may also be guilty of an offence.

9.3 Conversation Curation

Please see 9.2 Regulation of Unverified Information.

10. Insurtech

10.1 Underwriting Processes

The authors are not aware of a dedicated underwriting process specific to insurtechs that is mandated by UAE regulation. The CBUAE generally requires insurance companies to maintain an underwriting policy and that records of underwriting are kept. The DFSA sets out specific considerations that should be included as part of an insurer's underwriting risk policies and procedures, including (amongst other things): (i) clear identification and quantification of the insurer's willingness and capacity to accept risk; (ii) clear identification of the classes and characteristics of the insurance business that the insurer is prepared to underwrite; (iii) formal evaluation processes for the effective assessment of risks underwritten; (iv) concentration limits; and (v) methods for monitoring compliance with underwriting policies and procedure. The FSRA sets out similar conditions.

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From a commercial perspective, insurtech has significantly impacted the underwriting process for insurance policies. To review and assess an individual's risk profile, multiple data points are used through mined, aggregated or historical data to make educated assumptions about the individual in question. This underwriting process is underpinned by the use of the internet of things, data analytics methods and artificial intelligence. For instance, the administration system of Sheteq, a Dubai-based health insurance start-up, is powered by thousands of claim adjudication rules, which are used to process most claims and requests without the need for manual assessment. This high degree of automation allows Sheteq to control benefit utilisation while maintaining accuracy and consistency.

10.2 Treatment of Different Types of Insurance

Insurance companies are, in principle, all regulated in broadly the same way, irrespective of the type of insurance provided. As an exception to this, takaful, an Islamic form of providing insurance/reinsurance, is regulated separately in accordance with the requirements of Sharia. The relevant authorities responsible for issuing the regulations and supervising the insurance sector and its participants are: (i) the CBUAE in onshore UAE; (ii) the FSRA in the ADGM; and (iii) the DFSA in the DIFC. The CBUAE, FSRA and DFSA have all issued their own licensing frameworks setting out specific requirements with respect to insurance-related activities.

In line with the UAE's leading position as an enabler of emerging technologies, the regulatory authorities are also actively exploring opportunities and avenues through which they can promote the further development and adoption of insurtech solutions. For example, the FSRA and CBUAE have launched an Insurance Co-

Sandbox aimed at promoting a "smart insurance market". Insurtech start-ups are also being supported through the DIFC's Innovation Hub.

11. Regtech

11.1 Regulation of Regtech Providers

Regtech in the UAE is still in its nascent phase and there is currently no dedicated regulatory framework for regtech services. As regtech services are often technical services only, they are also less likely to trigger existing financial services licensing requirements, although this should be evaluated on a case-by-case basis.

In January 2019, the UAE launched its RegLab in partnership with the Dubai Future Foundation. The RegLab was launched with the purpose of authorising the UAE Cabinet to grant temporary licences for the testing and vetting of innovations that utilise technologies such as artificial intelligence. The RegLab works with federal and local government authorities, as well as private sector participants, to continue to develop a reliable legislative environment by introducing new, or developing existing, legislation to regulate emerging technology and its applications, including with respect to regtech.

In 2020, the ADGM launched three regtech pilot initiatives and, in April 2021, launched its Digital Lab to provide a secure environment to test technological solutions to facilitate the growth of regtech in the UAE.

The DIFC has established the DIFC Innovation Hub, the largest innovation community and fintech accelerator in the region, which also looks to support the development of regtech services.

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11.2 Contractual Terms to Assure Performance and Accuracy

Regulatory requirements related to outsourcing will need to be reflected in the contracts between regtech and SPs.

The extent to which these requirements will need to be applied may depend on the type of SP in question, the applicable regulatory regime and the particular regtech solution provided. Where a SP outsources a function directly related its regulated financial activity, GEN of both the FSRA and DFSA stipulate that a written agreement must be in place, but are largely not prescriptive with respect to the contents of such agreements. By contrast, with respect to banks, the CBUAE's Outsourcing Regulation details in more substantive terms the provisions that outsourcing agreements must contain. These requirements largely centre on data security and confidentiality as well as the permissibility of subcontracting within the outsourcing relationship. Obligations in respect of outsourcing also exist under other CBUAE regulations, including, for instance, the RPSCS Regulation and SVF Regulation.

Where a regtech provider offers insourcing solutions, contractual safeguards will need to be put in place to account for any risks arising out of the reliance on such solutions by the SP. As dictated largely by industry custom, such agreements often require provisions regarding (among other things) the maintenance of appropriate insurance policies, auditing rights in favour of the SP and reporting requirements. To the extent a regtech provider has access to personal data, the requirements set out in the DIFC, ADGM and onshore UAE data protection laws will need to be considered.

12. Blockchain

12.1 Use of Blockchain in the Financial Services Industry

Please refer to **1.1 Evolution of the Fintech Market, 2.1 Predominant Business Models and 2.2 Regulatory Regime** on the development of blockchain and virtual assets in the UAE.

12.2 Local Regulators' Approach to Blockchain

The UAE's regulators have reacted quickly to the growth in the use of blockchain within the financial services markets, particularly in respect of assets traded and stored on blockchain technologies – ie, virtual assets. All of the relevant UAE regulatory authorities set out a definition for virtual assets (or similar term) and contemplate the impact and use of decentralised ledger technologies, such as blockchain, within the provision of regulated financial activities. The UAE's regulatory landscape in this space is continuously evolving; for example, with the recent issuance of the VA Decision which determines the regulation of virtual assets and related services at federal level. Most notable, however, is the establishment of an entirely new regulatory framework and authority in the emirate of Dubai through the VARA and DVAL, dedicated to the licensing and supervision of blockchain-traded virtual assets and related activities.

12.3 Classification of Blockchain Assets

The UAE financial services regulatory frameworks each govern virtual assets to differing degrees, including those that are represented and stored on decentralised ledger technologies (DLT) – ie, blockchain assets.

The VA Decision defines virtual assets as “a digital representation of value that can be digitally traded or transferred and can be used for invest-

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ment purposes”. This does not include the digital representation of fiat currency, securities or other assets. The DVAL defines a virtual asset as “a digital representation of the value that can be digitally traded or transferred, or can be used as an instrument for exchange, payment or investment purposes, including virtual tokens, and any digital representation of any other value specified by the VARA in this regard”.

Under the CBUAE’s RPSCS Regulation and SVF Regulations, virtual assets constitute “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes”. Virtual asset tokens are also defined to mean a type of crypto-asset that can be digitally traded and functions as: (i) a unit of account; and/or (ii) a store of value. Crypto-assets are cryptographically secured digital representations of value or contractual rights that use a form of DLT and can be transferred, stored or traded electronically.

In offshore UAE, the DFSA regulatory regime captures different types of tokens (defined as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using DLT or other similar technologies) to varying degrees, which include crypto tokens, non-fungible tokens, investment tokens, security tokens and utility tokens. The FSRA also regulates virtual assets, which it defines as a digital representation of value that can be digitally traded and functions as: (i) a medium of exchange; (ii) a unit of account; and/or (iii) a store of value, but does not have legal tender status in any jurisdiction. Under the FSMR, a virtual asset is: (i) neither issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the

virtual asset; and (ii) distinguished from fiat currency and e-money.

12.4 Regulation of “Issuers” of Blockchain Assets

Requirements and conditions around the issuance of virtual assets are set out in the VARA’s Virtual Asset Issuance Rulebook (the “Issuance Rulebook”). The Issuance Rulebook includes requirements that all persons in Dubai wishing to issue virtual assets must follow the registration requirements for issuing permitted virtual assets and obtain approval from the VARA for issuing a virtual asset that is not a permitted virtual asset. Permitted virtual assets are: (i) free and non-transferable virtual assets; (ii) non-redeemable and non-transferable virtual assets; and (iii) redeemable closed-loop and non-transferable virtual assets. The issuer of a permitted virtual asset must: (i) register a whitepaper of the virtual asset with the VARA at least seven working days before its publication, accompanied by a declaration signed by the issuer in the form set out in Schedule 2 of the Issuance Rulebook which must be sent to the VARA; and (ii) comply with the requirements set out in the Issuance Rulebook. These requirements centre on the principles of honesty and integrity, conducting diligence, effective disclosure, implementing appropriate capabilities and resources, compliance and environmental responsibility.

The FSRA also sets out guidance in respect of initial coin offerings (ICO) in its “Guidance – Regulation of Initial Coin/Token Offerings and Crypto Assets under the Financial Services and Markets Regulations” (the “ICO Guidance”). The ICO Guidance sets out the FSRA’s approach to token issuers seeking to raise funds through ICOs, and market intermediaries or operators dealing in, or offering services in, virtual tokens and crypto-assets.

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12.5 Regulation of Blockchain Asset Trading Platforms

Trading of virtual assets is regulated under the general provisions applicable to trading set out by the DFSA, FSRA, SCA and VARA where the blockchain assets fall under the scope of their regulatory regimes. For further discussion on trading, please refer to the response in 7. **Marketplaces, Exchanges and Trading Platforms.**

12.6 Regulation of Funds

Funds are regulated in both onshore and off-shore UAE. A fund will fall within the scope of a UAE financial services regulatory authority's licensing framework by virtue of operating as such. Specific rules apply for particular types of investments.

The ADGM has a comprehensive virtual asset framework, which governs financial activities including collective investment funds investing in regulated digital assets. The virtual asset framework imposes certain additional regulatory obligations upon fund managers managing funds investing in regulated digital assets when it comes to periodic statements, capital requirements and technology governance and controls.

Similar to the ADGM regime, the DIFC's virtual asset framework also imposes certain additional regulatory obligations upon fund managers managing funds investing in regulated tokens.

12.7 Virtual Currencies

As a point of difference, virtual assets used for payment purposes, including stored value facilities, except those approved by the CBUAE for listing and trading purposes, are excluded from the VA Decision and fall exclusively under the jurisdiction of the CBUAE. By definition, this necessarily applies to cryptocurrencies.

12.8 Impact of Regulation on “DeFi” Platforms

While decentralised finance (DeFi) is captured under the scope of the VARA's regulatory regime in Dubai by virtue of the definition of a virtual asset platform set out under the DVAL, DeFi is not uniformly regulated across the UAE. In April 2022, the FSRA issued a discussion paper on policy considerations regarding the risks of DeFi, stating that regulatory intervention in respect of DeFi was likely in the medium term.

12.9 Non-fungible Tokens (NFTs)

Non-fungible tokens (NFTs) are captured by a number of the UAE's regulatory frameworks, including under the VA Decision. As noted above, the VA Decision defines a virtual asset as a digital representation of value that can be digitally traded or transferred and can be used for investment purposes. This does not include the digital representation of fiat currency, securities or other assets. To the extent that an NFT does not represent a physical asset, it appears to fall under this definition.

NFTs also fall within the definition of virtual assets provided by the DVAL, which defines a virtual asset as a digital representation of the value that can be digitally traded or transferred, or can be used as an instrument for exchange, payment or investment purposes, including virtual tokens, and any digital representation of any other value specified by the VARA in this regard. As such, those that intend to provide virtual asset services related to NFTs in the emirate of Dubai (excluding the DIFC) will be required to comply with the obligations set out under the DVAL and its supplementary regulations and rulebooks, including obtaining a licence from the VARA.

The DFSA's GEN determines that a token will constitute an NFT where it: (i) is unique and not

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fungible with any other token; (ii) is related to an identified asset; and (iii) is used to prove the ownership or provenance of the asset. In contrast to the VA Decision and DVAL, under the DFSA's regime, NFTs are considered excluded tokens, which means that their use is not regulated in the DIFC, except under certain circumstances.

While certain FSRA AML/CTF requirements will apply to NFTs in the ADGM, NFTs themselves currently remain outside of the FSRA's regulatory oversight.

13. Open Banking

13.1 Regulation of Open Banking

In the UAE open banking is regulated under the RPSCS Regulation. Under the RPSCS Regulation, payment initiation service providers (PISP) and account information service providers (AISP) are required to obtain a licence to operate in onshore UAE.

In offshore UAE:

- the DFSA amended GEN in 2020 to include the provision of open banking-related services within the scope of its licensing framework; and
- the FSRA introduced a new regulatory framework for Third Party Financial Technology Services. The framework for Third Party Financial Technology Services focuses on the activities provided by third parties that act as intermediaries between customers and financial service providers.

13.2 Concerns Raised by Open Banking

In recent years in the UAE there has been an increased awareness of privacy and data securi-

ty standards. This has been driven by the impact of the GDPR on international data flows as well as consumer and business expectations. The introduction of the GDPR has prompted a number of reforms in the regulation of data protection in the UAE with which providers of open banking services are also required to comply.

The DIFC and ADGM also amended their data protection regimes in 2020 and 2021 respectively. The DIFC and ADGM frameworks are largely modelled off the GDPR and require open banking providers to implement the data privacy and security measures contained therein where they are established in the financial free zones, or are processing the personal data of individuals in the financial free zones.

The CBUAE also sets out extensive data protection provisions as part of its regulatory framework. These obligations are largely contained in the CBUAE's Consumer Protection Regulation and Standards. The CBUAE's data protection provisions require open banking providers licensed by the CBUAE to implement various policies, processes, management and business practices in respect of data security, breach notifications, data retention and minimisation principles as well as ensuring that consumers are sufficiently informed to make choices in respect of their personal data. Onshore UAE's first consolidated data protection law came into effect in 2022 and although banking and credit data is excluded from its scope to the extent that provisions exist elsewhere, open banking providers established in onshore UAE will also be required to comply with its provisions in respect of most other forms of personal data they process.

Beyond this, the UAE's financial services regulators issued "Guidelines for Financial Institution Adopting Enabling Technologies" (the

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“Guidelines”). The Guidelines set out guidance in respect of the adoption of application performance interfaces (API), which are integral to the provision of open banking services. The Guidelines make clear, among other things, that in adopting or developing such APIs, the principle of “privacy by design” should be adhered to, such that only relevant data elements are exposed to any party in order to fulfil the purpose of the API.

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Oman, English, French, Qatar, Egyptian and New York law expertise, with strong relationships with local regulators and authorities. The firm's Dubai-based team operates at the very top end of the fintech market and is counsel of choice for leading regional fintechs and global payments businesses. It services digital asset, financial services regulatory, compliance, TMT and M&A matters. Any views expressed in this publication are strictly those of the authors and should not be attributed in any way to White & Case LLP.

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Trends and Developments

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Introduction

The UAE's fintech scene has witnessed significant growth in recent years, especially in the period following the onset of the global COVID-19 pandemic. There has been a visible increase in demand for digital services, which has presented a plethora of opportunities for fintechs as well as traditional market players moving into the fintech space. This has been particularly true within the areas of virtual and crypto assets, payments and open banking, which constitute the core of the UAE's key fintech ecosystem. The opportunities presented by the UAE's growing fintech market has attracted major global players and prompted the expansion of local fintechs.

Following the rise in fintech activity in the UAE, a significant amount of support for fintech has come from local investors (including SWFs) and regulators in the MENA region, who are supportive of creating a risk-sensitive and business-friendly regulatory environment. Regulatory sandboxes which allow live, time-bound testing of innovations under a regulator's oversight have been set up and various technology and financial service-related laws and regulations have been issued, including with respect to IP, consumer protection and data protection. There have even been various changes to foreign ownership, social and immigration laws, making it easier for fintech entrepreneurs to relocate to the UAE, set up or expand businesses and benefit from its attractive lifestyle. The UAE Government and numerous government-related entities also continue to exhibit a strong commitment to further diversify the country's economy so as to ensure

less reliance on oil. Financial services are viewed as a key part of this and we expect the trends within this sector to continue into the second half of this decade.

In this article, we seek to flesh out certain of these developments in greater detail.

Some Background on the Legal Regime Governing Fintechs in the UAE

At a macro level, the UAE is a federation which is made up of seven emirates – Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Quwain, Ras Al Khaimah and Fujairah. On top of this, a patchwork of free zones have been created. The majority of these are located in Dubai, with their development being driven by a desire to open up 100% foreign ownership which, until recently was not possible in onshore UAE, being, from a corporate law perspective, the area which falls outside the UAE's free zones. It is important to note that from a financial services regulatory perspective, the position is slightly different, with the non-financial free zones and mainland UAE falling within the same financial services regulatory framework, and being regarded as constituting "onshore UAE".

In onshore UAE, the Central Bank of the UAE (CBUAE) and the Securities and Commodities Authority (SCA) regulate financial services. Following the exponential growth in fintech and, more specifically, virtual asset-related activity in the UAE, a third regulatory authority – the Virtual Assets Regulatory Authority (VARA) – was established in 2022 to regulate virtual assets. It has

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jurisdiction over the emirate of Dubai (excluding the DIFC) only.

There are also two financial free zones in the UAE, being the Abu Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC). From a financial services regulatory perspective, these financial free zones are considered to be entirely separate jurisdictions from onshore UAE. The ADGM and DIFC each has its own highly sophisticated standalone rules and regulations that are premised on English common law. Together, the ADGM and DIFC constitute “offshore UAE” from a financial services regulatory perspective.

The Rise of Crypto

Whilst interest in virtual and crypto assets in western Europe and the US has declined in the wake of recent market volatility and a number of high-profile scandals that have hit the headlines, interest in virtual and crypto-assets in the UAE has held up. The UAE authorities continue to support the development of infrastructure, ecosystems and regulatory frameworks to seek to regulate these assets so as to ensure that consumers and the UAE’s wider financial system are appropriately protected.

While virtual assets are, to some extent, caught by existing rules that regulate more traditional financial products and services in the UAE, regulators in onshore and offshore UAE, including the VARA, have started to issue a series of bespoke virtual asset-specific rules, regulations and guidelines to govern this space. An example of this is “Dubai law regulating virtual assets” (DVAL), which was issued in February 2022.

The DVAL regulates persons that offer and provide virtual asset-related activities in Dubai only (excluding the DIFC) and empowers the VARA to

issue licences for persons wishing to undertake virtual asset-related activities (the “VA Activities”) in Dubai (excluding the DIFC). It also establishes the rules and controls governing the conduct of such VA Activities. More recently, in February 2023, the VARA issued the Virtual Assets and Related Activities Regulations 2023 which are executive regulations that supplement the DVAL. At the same time, it also issued a series of rulebooks covering areas such as compliance, risk management, technology, information and market conduct as well as seven VA Activities rulebooks. Again, this indicates the desire of the UAE authorities to develop and put in place sophisticated but balanced frameworks to allow virtual asset-related products and services to be offered and provided in the UAE whilst also protecting consumers receiving such products and services, and attracting virtual asset service providers to the country.

As mentioned above, the VARA and the rules and regulations it issues regulate VA Activities in Dubai (excluding the DIFC) only. The SCA (as a federal regulator of onshore UAE more generally) is responsible for regulating Virtual Assets and Related Service Providers in the UAE. In January 2023, the SCA issued a Cabinet Decision which reinforced that it is responsible for regulating virtual assets in onshore UAE at a federal level. The primary objectives set out in the Cabinet Decision are to:

- enhance the UAE’s regulatory framework that applies to the virtual asset sector;
- regulate virtual asset-related activities and those who provide them; and
- ensure that virtual asset service providers fall within the scope of the UAE’s anti-money laundering legislation.

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These are particularly important objectives in light of the efforts being made by the UAE to secure its removal from the Financial Action Task Force's Grey List to which it was added in March 2022.

Notwithstanding the significant steps that regulators in onshore and offshore UAE have taken to establish a comprehensive regulatory framework for virtual assets and VA Activities in the UAE, there is still some uncertainty in the market as to which regulatory authorities a business carrying out VA Activities actually needs permission from to operate. Businesses and consumers can take comfort in the fact that regulators and policy makers are taking steps to ensure a business-friendly environment which also protects consumers and we expect that further developments will be made to make the landscape more transparent in the coming months and years. However, this is one area where further clarity would be welcomed.

Generation-Defining Regulatory and Legal Reforms

In keeping with the histories of various other global financial hubs, the UAE has demonstrated an incredible ability to adapt. But its story – and that of Dubai in particular – is perhaps unique, transforming from a small collection of nomadic settlements and villages focussed on pearl and fish farming to a global metropolis in a single generation. Now seen as a global – rather than merely regional business and financial services hub – the UAE is acutely aware of the need to ensure that it has laws and regulations in place that align with global market standards but which also remain competitive in the context of fierce global competition from Asia, the US and Europe, as well as from a reform-minded and ambitious Saudi Arabia closer to home.

Data is critical to fintechs, but prior to December 2021, when the Personal Data Protection Law was issued, onshore UAE did not have self-standing data protection legislation of general application. Businesses have until six months after the Executive Regulations come out to align themselves with their requirements. These executive regulations are yet to be issued as at the date of this article, in March 2023, but their release is presently anticipated during the course of 2023 and they can be expected to clarify applicable requirements. Key differences between the Personal Data Protection Law and the EU's General Data Protection Regulation (GDPR) include the absence of a legitimate interest justification and stricter breach notification requirements in the UAE law. The ADGM and DIFC already both have had standalone data protection laws for a number of years, which were updated in 2021 and 2020 respectively, both of which are best seen as resembling a light-touch version of the GDPR.

The UAE's legislative reforms have not been limited to data protection. Since 2018, the UAE has been easing its restrictions surrounding foreign ownership of companies. Previously, 100% foreign ownership was restricted to the territories of the DIFC, ADGM and the UAE's economic free zones. This meant that in onshore UAE, companies were required to be majority UAE-national owned. Now, following a series of legislative changes, 100% foreign ownership of onshore companies carrying out certain activities is possible.

In January 2022, the UAE's new Copyright and Trademark Laws also took effect. The Copyright Law consolidates businesses' claims to copyrighted works, while the Trademark Law notably provides recognition for olfactory, holographic,

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sound and 3D marks along with geographic indications.

In September 2021, the UAE's Cybercrime Law, which criminalises various offences surrounding digital content, the use of information technology and privacy (amongst other things) also underwent significant amendment. While still farther reaching than any comparable law in western Europe and the US, the new Cybercrime Law demonstrates the UAE's commitment to drawing in foreign investment.

Going a step further, the UAE has also relaxed a number of social laws, including around the cohabitation of unmarried couples, and introduced new regulations regarding visas to further encourage immigration. The availability of golden and green visas are directly targeted at professionals that can readily invest in the UAE's economy.

Dawn of Open Banking

Open banking, which permits financial service providers to access data from banks and financial institutions, is now starting to take off in the UAE.

The CBUAE's Fintech Office has already launched an initiative to develop an open finance vision and roadmap, aiming to implement a robust, efficient and secure environment to further facilitate collaboration, interoperability and data sharing between financial institutions and licensed third-party providers. This follows other recent developments, including guidelines issued by the UAE's financial services regulatory authorities on the adoption of enabling technologies by financial institutions. These guidelines set out guidance on governance, design, standardisation and management when adopting application programming interface technolo-

gies, which act as gateways through which third party providers can access banking data and payments infrastructure.

In June 2022, the DIFC launched its Open Finance Lab in line with the DIFC's Strategy 2030. The Open Finance Lab was a six-month initiative that commenced on 28 June 2022, with the participation of various UAE banks.

A Rising Interest in Buy Now, Pay Later (BNPL)

BNPL makes it possible for consumers to purchase a product and pay for it later. Importantly, these short-term financing solutions can be accessed quickly, in contrast to traditional loans which are generally associated with lengthy paper work, long-winded credit approvals and delays.

In 2022, various UAE and Saudi-based BNPL providers announced expansion plans and collaborations with various local merchants. In reaction to this market growth, the relevant authorities in the UAE are actively assessing how their regulatory frameworks should be developed and expanded to capture this market segment and ensure BNPL user protection.

There is currently no bespoke regulatory regime governing the provision of BNPL in onshore UAE. However, the CBAUE is taking steps to consider its position on the regulation of short-term credit and we expect to see further information on this in 2023. The the Dubai Financial Services Authority (DFSA) has taken pole position with the release of its Consultation Paper No 146, addressing concerns regarding the provision of BNPL products and services in the DIFC. The DFSA raised several issues regarding the ease and manner with which BNPL products are being offered, often with lack of consumer edu-

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cation surrounding BNPL. The DFSA proposed that its current rules and regulations, to which credit providers are subject, may soon apply to BNPL providers too.

It is expected that the “Gross Merchandise Value” of BNPL in the UAE will increase from around USD2 billion in 2021 to north of USD18 billion by 2028.

Final Thoughts

The world’s technology giants and prominent crypto players have been quick to recognise the UAE’s strong upward trajectory when it comes

to digital assets, fintech and metaverse-based investments, choosing to establish and develop their Middle Eastern presence in the UAE. The country’s leadership has been key to the UAE’s success in growing as a global fintech hub, implementing both the necessary legal and physical infrastructure for these businesses and setting the UAE up to continue to build on its achievements from the past 50 years over the next 50.

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challenges, and offer UAE, Saudi, Bahrain, Oman, English, French, Qatar, Egyptian and New York law expertise, with strong relationships with local regulators and authorities. The firm's Dubai-based team operates at the very top end of the fintech market and is counsel of choice for leading regional fintechs and global payments businesses. It services digital asset, financial services regulatory, compliance, TMT and M&A matters.

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