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IN THIS ISSUE

Cover Story

The implementing regulations of the PDPL in KSA and regulations on personal data transfer outside the kingdom

1

Legal & Regulatory Updates

6

Thought Leadership

7

Qatar Digital Assets Framework Proposal

Key Compliance Requirements for VASPs Pursuing VARA License in UAE

10

Roundup

What kept us busy at Rasma Legal

13

COVER STORY

THE IMPLEMENTING REGULATIONS OF THE PDPL IN KSA AND REGULATIONS ON PERSONAL DATA TRANSFER OUTSIDE THE KINGDOM

What are the key provisions and responsibilities outlined in Saudi Arabia's recently introduced Data Transfer and Personal Data Protection Regulations?

How do these regulations prioritize safeguarding personal data while outlining the obligations of controllers and processors?

NAVIGATING THE KEY PROVISIONS AND RESPONSIBILITIES OUTLINED IN SAUDI ARABIA'S RECENTLY INTRODUCED DATA TRANSFER AND PERSONAL DATA PROTECTION REGULATIONS

COVER STORY

During September, 2023, the Saudi Data and Artificial Intelligence Authority (SDAIA) officially released the Regulations on Personal Data Transfer Outside the Geographical Boundaries of the Kingdom. The subsequent discussion will involve a thorough outline of the Personal Data Transfer Regulations.

The Regulations permit the transfer or disclosure of personal data to an entity outside the Kingdom, provided that such transfer or disclosure is limited to the minimum extent required to achieve the intended goal of the transfer or disclosure process and does not compromise national security, the vital interests of the Kingdom, or violate any other laws within the Kingdom.

The Data Transfer Regulation establishes the criteria for evaluating when assessing the level of personal data protection outside the Kingdom. These criteria include many factors such as the primacy of laws, that ensure protection of personal data subjects' rights, and the preservation of their privacy.

The assessment findings must be presented to the Prime Minister and subject to a review every four years, or when deemed necessary, especially for nations, sectors, or international organizations where accreditation decisions or international agreements have been made.

A proposal to cancel, modify, or suspend any measure pertaining to the level of personal data protection outside the Kingdom should be submitted to the Prime Minister. This demonstrates the ability to adapt to the evolving digital landscape, ensuring that data protection measures remain effective in safeguarding personal information.

Furthermore, the Regulation outline the indispensable guarantees required for transferring personal data beyond the Kingdom in the absence of adequate level of protection. If these guarantees can't be employed, Article 6 of the Data Transfer Regulation presents the situations by which the transfer of personal data outside the Kingdom can still be authorized

- (i) when Data transfer is required to fulfill an agreement involving the data subject
- (ii) when the controller is a public entity and the transfer is essential to safeguard national security or serve a public interest
- (iii) when it deems necessary for crime investigation, detection, prosecution, or penalties enforcement
- (iv) or when data transfer is essential to protect the data subject's vital interests, and contact is not feasible.

Despite the Regulation allowing transfers of personal data outside the Kingdom or disclosure of the same to a party outside the Kingdom based on specific guarantees, and in some situations where these guarantees aren't applicable, such transfers must “stop, without undue delay” and the controller shall re-assess their risks in certain cases. This includes, but is not restricted to, cases where the transfer or disclosure process is found to impact national security or the vital interests of the Kingdom.

In its concluding provisions, the Data Transfer Regulations mandates in the cases stipulated in Article 8, that the controller must assess the risks associated with transferring data outside the Kingdom or disclosing it to an external party. The same article outlines the minimum criteria to be included in this assessment; including, but not limited to, measures to mitigate and prevent identified personal data protection risks as well as the purpose and legal justification for the transfer or disclosure process.

To conclude, the clarity and comprehensiveness of the Data Transfer Regulation guarantee the safeguarding of data during its transfer outside of KSA. These provisions also transparently illustrate the steps taken to ensure and preserve the data's privacy and protection, with an unwavering commitment to prioritize these considerations above all else. The aim is to proactively anticipate potential scenarios and establish precise steps for each, minimizing any confusion and ensuring utmost data protection during the transfer process.

The recently introduced Implementing Regulations for the Personal Data Protection Law entail a thorough analysis of the obligations applicable to all entities, with the exception of those utilizing personal data for personal or familial use.

The core stipulations outlined in these Regulations encompass the following fundamental prerequisites.

The rights of Personal Data Subjects are meticulously presented in these new regulations. When the controller receives any request from a personal data subject pertaining to their rights, they must respond within 30 days, with the possibility of an extension if the inquiry demands unexpected or additional effort.

Additionally, the Personal Data Subject has the right to be informed. The implementing regulation distinguishes between three scenarios:

- (i) When personal data is collected directly from the data subject, the controller is obligated to undertake the necessary steps to inform the subject of certain information such as the legal basis and purpose for data collection, as well as the intended duration of data retention,
- (ii) When Personal Data is collected from someone other than its owner where the controller is bound by a 30-day timeframe to inform the Personal Data subject of the required information,
- (iii) Additional notification requirements are imposed when the controller's activities involve “processing Personal Data of incompetent or incapacitated persons, or processing operations that

by their nature require continuous monitoring of Personal Data Subjects, or processing Personal Data using emerging technologies, or making decisions based on the automated processing of Personal Data”.

The Personal Data Subject also enjoys the right to access their Personal Data held by the Controller, request a copy of this data in a clear and readable format, and request the restriction of their Personal Data if it is found to be inaccurate, pending verification.

The Implementing Regulation grants the right to destroy Personal Data in specific instances, including, for instance, upon the request of the data subject or when it is no longer required to fulfill the original purpose for its collection.

The rights bestowed upon the Personal Data Subject are of paramount importance and act as a safeguard, ensuring their protection and creating a secure environment for their personal data. This fosters a sense of security and reassurance for the data subject. The meticulously detailed rights prioritize and underscore the significance of the subject's protection.

The consent procedure is comprehensively outlined and given significant importance in the Implementing Regulations.

It specifies that consent can take various suitable forms or means, must be given voluntarily by a legally competent individual, must be clear and specific, and documented.

Moreover, there must be separate and independent consent for each processing purpose.

Consent must be explicit in processing involving sensitive data, credit data, or when decisions are solely based on automated processing of Personal Data. Consent is also a requisite for proceeding with the processing of personal data for advertising and direct marketing purposes. The Data Subject has also the right to revoke their consent, in this case the controller shall stop processing their Personal Data without delay.

The article underscores the crucial role of the Personal Data Subject's consent, emphasizing that it serves as both the beginning and the end of the data processing journey. The prominence of consent in granting authority is evident, as it supersedes all other considerations.

The Implementing Regulations govern the procedures for situations in which the Personal Data Subject is incapacitated or legally incompetent and necessitates a Legal Guardian ensuring the protection of its rights. They also establish the guidelines for processing Personal Data for vested interests, legitimate purposes, for scientific/ research or statistical purposes, processing of health data and credit data. Additionally, they regulate the actions pertaining to the disclosure of personal data.

Covering various data types and processing purposes lead to eliminating room for ambiguity and enhancing overall clarity.

The controller, who holds control over the process of Personal Data, carries a significant array of responsibilities. These obligations are aimed at ensuring the precise execution of their duties, ultimately safeguarding the privacy of Personal Data. The competent authority will establish regulations that govern the licensing of entities responsible for issuing accreditation certificates to Controllers and Processors.

Controller's obligations are stipulated throughout the Regulations, encompassing, but not limited to, taking essential measures, as outlined in the Regulations, when concealing the identity of the Personal Data subject (Anonymization), collecting the minimal amount of Personal Data required to achieve the processing purpose, consistently implementing measures to guarantee Personal Data security and the privacy of its subjects, choosing a processor and issuing clear instructions to the processor as well as verifying regularly his commitment. Additionally, there's an obligation to promptly report to the competent authority any personal data breaches within 72 hours from becoming aware of the incident. The controller is also tasked with evaluating and preparing a documented assessment of the potential impacts and risks affecting the Personal Data subject as a result of processing Personal Data and keeping accurate and up-to-date records of Personal Data processing activities.

The obligations of the controller also encompass omissions. This means refraining from copying or reproducing official documents issued by public entities that identify the Personal Data Subject, except when requested by a competent public entity or when the provisions of a law require it.

As previously outlined, the controller bears a significant and expansive set of responsibilities and obligations, meticulously detailed and expressed with clarity to minimize errors. This underscores the commitment of the controller to diligently safeguard both the Personal Data subjects and the data itself. Such comprehensive measures provide assurance to the subjects, instilling a sense that the law is actively protecting and upholding their rights.

To further enhance the enforcement of Personal Data protection, the regulations also delineate three scenarios in which the Controller must designate or identify one or more individuals responsible for safeguarding Personal Data, while also specifying his responsibilities:

- (i) when the Controller is a public entity offering services involving extensive processing of Personal Data,
- (ii) when the primary operations of the Controller necessitate regular and systematic monitoring of Personal Data Subjects by their inherent nature,
- (iii) when the Controller's core activities revolve around the processing of sensitive Personal Data.

To guarantee the ongoing adherence to these regulations, there are verification and inspection procedures articulated in the Implementing Regulations. These processes are designed to protect Personal Data by evaluating and inspecting the processing activities conducted by the entity.

Additionally, the Personal Data Subject has the right to lodge a complaint with the competent authority within 90 days from the date of the incident in question. The competent entity will then take the necessary actions to address the matter. These procedures serve to guarantee sustained compliance with these regulations and to meticulously verify that their application adheres precisely to the stipulated standards.

Ultimately, the Implementing Regulations for the Personal Data Protection Law offer a comprehensive and meticulous framework for data protection in Saudi Arabia minimizing any margin for error. They demonstrate an unwavering commitment to safeguarding Personal Data and emphasize that placing the protection and safety of Personal Data and the Personal Data Subject as the top priority is an imperative. Businesses subject to the PDPL should review their personal data policies to ensure robust personal data protection measures are in place.

The progress and initiative provide greater confidence in secure and protected laws, fostering the development and safety of communities.

Emirates NBD launches Digital Wealth Platform

Emirates NBD has introduced a digital wealth platform that enables customers to trade a wide range of securities and ETFs on both global exchanges like Nasdaq, NYSE and the London Stock Exchange, as well as local markets such as the Dubai Financial Market, Abu Dhabi Securities Exchange, and Nasdaq Dubai. In total, the platform offers access to over 11,000 global equities and 150 regional equities for trading.

This platform is integrated into the bank's newly launched mobile app called ENBD X, providing customers with a convenient way to invest and trade in complex financial instruments alongside their everyday banking activities.

The new wealth platform offers a quick and easy onboarding process for both existing investment account holders and new investors, involving just three simple steps.

LEGAL & REGULATORY UPDATES

New investors will receive their account details via SMS and email instantly and can start trading securities and ETFs after adding funds to their account through the platform's Express Top-Up feature.

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Qatar Digital Assets Framework Proposal

After the Qatar Financial Center issued an alert in December 2019 to affirm that virtual asset services may not be conducted in or from the Qatar Financial Centre including exchange between virtual assets and fiat currencies or between one or more forms of virtual assets, transfer of virtual assets, safekeeping and administration of virtual assets; the Qatar Financial Centre Regulatory Authority and the Qatar Financial Centre Authority (QFCA) have jointly unveiled the QFC Digital Assets Framework.

Qatar has issued in October 2023 a public consultation on proposals to introduce a crypto framework for the Qatar Financial Centre (QFC) that seeks to regulate investment tokens representing underlying assets that are specified products under existing financial services regulations.

The proposed rules prohibit activities in tokens that do not represent an underlying asset or are cryptocurrencies and alternatives such as stable coins in line with existing prohibitions by the authorities.

All interested parties are invited to submit their comments and feedback on the proposed framework by January 2, 2024.

The proposed Digital Assets Framework is the following:

Regulatory Authority Rules:

Investment Token Rules 2023: The proposed Rules primarily make provision for the treatment of tokens ("investment tokens") representing underlying that are Specified Products under the QFC Financial Services Regulations ("FSR"). They provide for any person who carries out an activity in relation to such a token to be conducting a regulated activity, requiring authorization and supervision by the Regulatory Authority.

Investment Tokens Miscellaneous Amendments Rules 2023: The proposed Rules amend six sets of Regulatory Rules in consequence of the introduction of investment tokens.

QFC Authority Regulations and Rules:

Digital Asset Regulations 2023: The proposed Regulations establish the concept of tokens and what constitutes a permitted token. The Regulations also contain provisions relating to transfer of tokens, token ownership, and rights in the underlying and various definitions for the types of token service providers that will be subject to the proposed licensing framework in the QFC.

Digital Asset (Companies Regulations and Special Company Regulations) Amendment Regulations 2023: The proposed Regulations amend the Companies Regulations and Special Company Regulations to provide for the tokenisation of shares and related amendments.

THOUGHT LEADERSHIP

Digital Asset (QFCA Rules and Non-Regulated Activities Rules) Amendment Rules 2023: The proposed Rules amend the QFCA Rules and Non-Regulated Activities Rules and establishes the framework for licensing token service providers, including a code of practice for token service providers, and sets out the activities that may be conducted in the QFC in relation to tokens.

The proposed framework aims to achieve the following objectives:

establish a tokenization framework in the QFC that will provide legal certainty and a trusted technology environment for digital assets;

legally recognize digital assets and address issues such as ownership of the underlying assets, custody arrangements, the transfer of ownership, trading and exchange of digital assets and smart contracts;

develop a technology infrastructure with the necessary standards to ensure trust and confidence among consumers and support from high quality service providers; and develop a framework that delivers certainty and promotes trust and confidence in digital assets, the market and the service providers.

It's essential to note that the proposed draft legislation is subject to change and may differ from the final version to be published by the QFCA.

THOUGHT LEADERSHIP**AUTHORED BY**

Stephanie Naaman is a highly qualified lawyer with more than 10 years of experience in the legal industry. She possesses a comprehensive array of legal proficiencies, encompassing commercial law, civil law, corporate law, employment law, property law, banking law, criminal law, as well as the practice of civil and criminal litigation. She consistently assists the clients in drafting various types of agreements including cross-border transactions and M&A. She also undertakes due diligence and restructuring, conducts legal studies and provides legal advices on several legal matters.

KEY COMPLIANCE REQUIREMENTS FOR VASPS PURSUING VARA LICENSE IN UAE

Overview

What is VARA?

The Dubai Virtual Assets Regulatory Authority (VARA) was established and authorised by Law No. 4 of 2022 Regulating Virtual Assets in the Emirate of Dubai.

VARA is the competent authority in charge of regulating, supervising, and overseeing Virtual Assets activities throughout the Emirate of Dubai, including Special Development Zones and Free Zones but excluding the Dubai International Financial Centre (DIFC). VARA is important to the development of Dubai's advanced legal framework for investor protection and the establishment of worldwide standards for Virtual Asset industry regulation.

VARA has issued the Virtual Assets and Related Activities Regulations which provide a comprehensive Virtual Assets framework for companies operating or planning to operate in Dubai.

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Who should abide by VARA?

Since the introduction of VARA regulations in the UAE, companies dealing with Virtual Assets, whether within the UAE or internationally, have shown a significant interest.

VARA covers Virtual Asset Service Providers (VASPs) dealing with Virtual Asset and providing: Advisory Services, Broker-Dealer services, Custody services, Exchange services, Lending and Borrowing services, Management and Investment services, and other Virtual Asset services.

What are the key compliance requirements for VASPs pursuing VARA license in UAE?

VARA has extensively addressed the Compliance and Risk management procedures within VASPs, demonstrating VARA's commitment to minimizing compliance risks.

The key compliance requirements are outlined as follows:

1- Appointment of a Compliance Officer:

- The VASP must appoint a Compliance Officer capable of managing the Compliance and Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) program and fulfilling all duties specified by VARA.

- The Compliance Officer may hold multiple non-client-facing roles, including but not limited to MLRO (Money Laundering Reporting Officer) and Head of Risk.

2- Appointment of an MLRO:

- The VASP is required to appoint an MLRO capable of handling all duties specified by VARA.

3- Maintenance of Compliance and AML/CFT Policies:

- The VASP is required to maintain Compliance Manual and AML/CFT Policies detailing compliance processes within the company.

- These policies must adhere to VARA rulebooks, UAE Federal Laws, and Financial Action Task Force (FATF) recommendations.

4- Client Due Diligence and Transaction Screening:

- This involves screening clients, Ultimate Beneficial Owners (UBOs), Virtual Asset transactions, and Virtual Asset wallet addresses.

5- Transaction Monitoring and Suspicious Transaction Reporting:

- The VASP is obligated to monitor transactions and report suspicious transactions to the Financial Intelligence Unit (FIU) and VARA through GOAML.

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6- Travel Rule Compliance:

- Compliance with the FATF travel rule is required. The VASP is obliged to showcase its commitment to the Travel Rule by providing a demonstration of compliance, along with the submission of relevant policies and controls.

7- UAE EOCN Registration:

- The VASP must register with and adhere to the UAE Executive Office for Control & Non-proliferation (EOCN) to get timely alerts on sanctions.

8- Record Keeping:

- Documents and information to be stored in a readily retrievable format for a duration of eight years. Records pertaining to the national security of the UAE may be required to be retained indefinitely.

9- Training:

- Adequate training is essential and should be extended to both employees and senior management.

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How can Rasma Legal help?

Rasma Legal provides comprehensive support to a wide-range of companies operating in the Virtual Assets space. Our services extend to both local players and international VASPs seeking entry into the market. Rasma Legal guides VASPs and offers support in various aspects such as incorporation, policies and manuals preparation, addressing regulator queries, and providing overall assistance until the successful launch and operation of the VASP license.

We also assist in meeting the annual, quarterly, and monthly obligations the VASP has, even after getting the license and initiation of operations.



AUTHORED BY

Reem Al Tawil is an accomplished compliance professional with over 5 years of experience in the banking and fintech industry. She holds the the CAMS certificate and a Business Administration Degree with Finance Emphasis from the American University of Beirut (AUB). Her expertise lies in developing and implementing robust compliance and AML/CFT policies, ensuring strict adherence to regulatory frameworks. Previously, she served as a Compliance Lead in a fintech firm, collaborating with cross-functional teams to provide regulatory guidance and mitigate compliance risks. Reem's career includes key roles at reputable institutions, where she excelled in risk assessments, AML/CFT practices, policy drafting, and regulatory oversight, making her an invaluable asset in the compliance field.

ROUNDUP

WHAT KEPT US BUSY AT RASMA LEGAL

We are delighted with how this year turned out, we proudly took home a couple of trophies at the Legal Era Awards 2023. We are grateful to you for your unwavering trust and belief in us!



Finalist!

TMT Law Firm of the Year
Law Firm of the Year-
Lebanon



Winner!

Fintech Law Firm of the Year
Finest and leading Middle East
Lawyer of the Year in Digital

Assets- Mazen Rasamny,
Managing Partner





Rasma Legal has been recognized by IFLR1000 as a 'Notable Firm' in Mergers and Acquisitions (UAE) and Financial Corporate (Lebanon).



Rasma Legal received the 'Honorary Mention' for "TMT Team of the Year" and had been nominated as "Emerging Law Firm of the Year" for the Oath Middle East Legal Awards 2023.

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Rasma Legal, founded by **Mazen Rasamny**, is a multi-service law firm catering to the innovation economy. The firm is headquartered in the **United Arab Emirates (UAE)** and has branches in **Saudi Arabia (KSA)** and **Lebanon**. Led by the expertise and leadership of Mazen Rasamny, Rasma Legal stands as a beacon of legal excellence, equipped to guide clients through their diverse legal undertakings. Having an extensive legal background spanning over **23+ years**, Mazen Rasamny brings a wealth of knowledge and experience to the table. The firm is focused on **innovation** and **growth** and has been instrumental in providing comprehensive legal services to entrepreneurs and start-ups in areas such as **M&A, Corporate and Commercial laws, Debt & Equity Capital Markets, Banking & Finance (including Project Finance), Corporate & Financial Restructuring, Energy, Infrastructure, and Project Development**. The firm has also been recognized by several leading legal publications such as **Asian Legal Business, IFLR1000, The Legal 500, Legal Era**, and **more**.

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