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A MONTHLY COMPILATION OF ARTICLES AND LEGISLATIVE & REGULATORY UPDATES CURATED BY RASMA LEGAL

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COVER STORY

PAYMENT TOKEN SERVICES UNDER CENTRAL BANK OF UAE CIRCULAR NO. 15/2021 (RETAIL PAYMENT SERVICES AND CARD SCHEMES REGULATION)

In this article:

- What are Payment Tokens?
- What are Payment Token services?
- Who can provide Payment Token Services?
- Payment Token Services License
- Specific Obligations for Providing Retail Payment Services on Payment Tokens
- Ensuring Financial Integrity and Cybersecurity in Payment Services

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COVER STORY

The Central Bank of the UAE (the "CBUAE") in its Circular No. 15/2021, Retail Payment Services and Card Schemes Regulation (the "Circular") regulated and set out the guidelines for obtaining a License for the provision of retail payment services. The CBUAE classified these digital payment services into nine categories, namely: ***(i) Payment Account Issuance Services, (ii) Payment Instrument Issuance Services, (iii) Merchant Acquiring Services, (iv) Payment Aggregation Services, (v) Domestic Fund Transfer Services, (vi) Cross-border Fund Transfer Services, (vii) Payment Token Services, (viii) Payment Initiation Services, (ix) Payment Account Information Services.***

In the realm of digital finance, Payment Tokens have emerged as versatile crypto-assets backed by fiat currencies, facilitating seamless transactions and serving as mediums of exchange, units of account, and stores of value. As these tokens gain prominence, regulatory authorities, including the Federal financial regulator, the CBUAE, have imposed licensing requirements and compliance standards to oversee Payment Token Services. This introduction provides a brief insight into the definition of Payment Tokens, their role, associated services, and the regulatory framework shaping their operation, underscoring their significance in modern financial transactions.

What are Payment Tokens?

A Payment Token is a type of Crypto – Asset that is backed by one or more Fiat Currencies (i.e., stablecoins). It can be digitally traded and functions as:

- **a medium of exchange;**
- **a unit of account; and/or**
- **a store of value, but does not have legal tender status in any jurisdiction.**

A Payment Token is neither issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the Payment Token. A Payment Token also does not represent any equity or debt claim.

What are Payment Token Services?

Payment Token Services mean the Retail Payment Services consisting of any of the following activities related to Payment Tokens: ***(i) Payment Token Issuing; (ii) Payment Token Buying; (iii) Payment Token Selling; (iv) Facilitating the Exchange of Payment Tokens; (v) enabling payments to Merchants and/or enabling peer-to-peer payments; and (vi) Custodian Services. For the avoidance of doubt, a Payment Service Provider may provide only one of the Retail Payment Services referred to in points (v) and (vi); if it wishes to provide both and allows Retail Payment Service Users to redeem the Payment Tokens with any Fiat Currency under a contractual arrangement, it must comply with the respective SVF requirements.***

Payment Token Services do not include Security Tokens, Commodity Tokens and Virtual Asset Tokens and the provisions associated with the same.

Who can provide Payment Token Services?

Only Persons that have been Licensed by the CBUAE and have fully met the conditions for obtaining a License are permitted to engage in Retail Payment Services. Furthermore, unless licensed in advance by the CBUAE, no Person shall engage in the Promotion of any Retail Payment Services including Payment Token Services, within the UAE.

Although Banks licensed under Federal Decree-Law No. 14/2018 are exempted from obtaining the License, they are required to notify the Central Bank in writing if they intend to provide Merchant Acquiring Services, Payment Aggregation Services, Payment Token Services, Payment Initiation Services and Payment Account Information Services and obtain a No Objection Letter prior to commencing.
Also, except for the issuance of credit cards, finance companies are required to obtain a prior License from the Central Bank to provide Retail Payment Services including Payment Token Services.

Payment Token Services License

A Person shall submit an application to obtain a Category 1 License if it wishes to provide Payment Token Services. Additionally, the applicant shall:

- fulfill the Legal Form of Applicants established in accordance with Article (74) of the CBUAE Law.
- meet the required capital for Category 1 License which is:

- initial capital of at least three (3) million Dirhams where the monthly average value of Payment Transactions amounts to ten (10) million Dirhams or above; or

- initial capital of at least one and a half (1.5) million Dirhams where the monthly average value of Payment Transactions amounts to less than ten (10) million Dirhams.

- provide the necessary documents and information specified in the CBUAE application form as provided by the Licensing Division.
- at the time of submitting an Application, provide a list of all Payment Tokens that it intends to issue and obtain a legal opinion on the assessment for all Payment Tokens.

Specific Obligations for Providing Retail Payment Services on Payment Tokens

The obligations outlined for Payment Service Providers (PSPs) regarding Payment Tokens issuance and management are comprehensive and interconnected. PSPs are required to maintain a Reserve of Assets for each category of Payment Token issued, managing it effectively to align with the creation and destruction of tokens and prevent adverse impacts on the market.

Also, a clear policy on stabilizing the token value is mandated, encompassing the description of reference assets, risk assessments, and procedures for token creation, destruction, and redemption against the Reserve. PSPs must undergo biannual independent audits of their Reserve of Assets, starting from the approval of the CBUAE White Paper.

Moreover, custody policies must ensure segregation, non-encumbrance, and prompt access to the Reserve to meet redemption requests. Investments of the Reserve, if undertaken, should be in highly liquid financial instruments with minimal risk, with any associated profits or losses borne by the PSPs. Pre-trade transparency requirements necessitate continuous disclosure of bid/offer prices, trading volume, and depth of interest, while mechanisms for post-trade transparency must ensure real-time disclosure of transaction details.

These obligations collectively aim to promote transparency, stability, and prudent management in the issuance and exchange of Payment Tokens.

Ensuring Financial Integrity and Cybersecurity in Payment Services

In recognition of the paramount importance of AML and CFT policies and measures that are essential to protect the integrity and stability of financial markets, the CBUAE mandates strict measures for PSPs to combat money laundering and terrorism financing, requiring compliance with relevant Federal laws and risk assessments. PSPs must establish internal policies and controls, conduct rigorous customer due diligence (CDD) procedures, and report suspicious activities. Additionally, they must adhere to technology risk and information security standards, including establishing effective IT governance, cybersecurity structures, and network management protocols. Notably, PSPs must also have robust business continuity plans and manage reputational risks effectively. Compliance with these regulations is crucial for PSPs to maintain financial integrity and ensure secure functioning of their operations.

Conclusion

The concept of Payment Tokens and Payment Token Services represents a significant development in the realm of digital finance, offering a novel approach to facilitating transactions and financial services. The regulatory framework established by the CBUAE ensures that providers of these services operate within defined guidelines, promoting transparency, stability, and responsible management. By delineating specific obligations and requirements, the framework aims to safeguard the interests of consumers and uphold the integrity of the financial system. These clearly defined regulations also provide regulatory certainty for PSPs, enabling them to understand and comply with regulatory requirements and adjust their operations accordingly. As the landscape of digital assets continues to evolve, adherence to these regulations becomes imperative in fostering trust and confidence among users and stakeholders alike.

***The capitalized words used in this article carry the same meaning as those provided in the Circular.**

LEGAL & REGULATORY UPDATES

The Dubai International Financial Centre (DIFC) enacted its own Digital Assets Law, DIFC Law No. 2 of 2024 (the "DLA")

which officially came into effect on March 8, 2024. The DIFC also repealed its 2005 security law and enacted a new Law of Security, DIFC Law No. 4 of 2024. The new regime is modelled on the UNCITRAL Model of Secured Transactions and aims to align the DIFC securities regime with global developments and best practices. These enactments followed the release of Consultation Papers No. 4 and No. 5 of 2023, whereby the Dubai International Financial Centre Authority (DIFCA) solicited public comment on the proposal to enact the new DLA. Recognizing the notable role of digital assets as a significant asset class, which presents opportunities within the financial services sector and broader domains, the DIFC proactively established legal certainty and protection.

This ensures confidence and clarity for investors and users alike. Part 2 of the DLA sets out the following definition for Digital Assets: "A thing is a Digital Asset if: (a) it exists as a national quantity unit manifested by the combination of the active operation of software by a network of participants and network-instantiated data; (b) it exists independently of any particular person and legal system; and (c) the thing is not capable of duplication and use or consumption of the thing by one person or specific group of persons necessarily prejudices the use or consumption of that thing by one or more other persons."

The DIFC New Digital Assets Law

LEGAL & REGULATORY UPDATES

The DLA proceeds to outline their legal characteristics as an intangible property, that is neither a thing in possession nor a thing in action.

The DLA also sets out provisions regarding the control of a Digital Asset, general rules as to the title and superior legal title to a Digital Asset, the transfer of title and conditions thereof, as well as the execution of rights upon death, incapacity or insolvency.

Furthermore, the DLA elaborated on the intentional and unintentional impairment of the use of a Digital Asset, and recovery of their control.
This legislative enactment marks a significant milestone, as it is the first to establish the legal framework for digital assets and provide clear guidelines on their control, transfer, and management, setting a precedent for future regulatory developments.

Stay tuned for an in-depth article on the new Digital Assets Law in the near future.

You can access the DLA on the DIFC Legal Database here.

The DIFC New Digital Assets Law

LEGAL & REGULATORY UPDATES

The United Arab Emirates (UAE) has achieved a historic milestone in the realm of digital currency by successfully launching its inaugural cross-border payment using the Digital Dirham.

This groundbreaking transaction, valued at AED 50 million ($13.6 million), signifies a significant stride in the UAE's dedication to embracing cutting-edge financial technologies.

Sheikh Mansour bin Zayed Al Nahyan, the Chairman of the Board of the Central Bank of The UAE, took the lead in initiating this historic transaction, showcasing the unequivocal support and endorsement from the highest levels of the country's financial leadership.

The Digital Dirham, functioning as a central bank digital currency (CBDC), represents a state-of-the-art digital currency leveraging blockchain technology. This departure from traditional banking systems promises heightened efficiency, transparency, and security in financial transactions, reflecting the UAE's commitment to innovative and progressive financial solutions.

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LEGAL & REGULATORY UPDATES

Tungsten Custody Solutions Ltd has officially launched the first regulated custodian of virtual assets, tailored to safeguard virtual assets exclusively for institutional investors within the Abu Dhabi Global Market (ADGM).

Headquartered in Al Reem Island in Abu Dhabi, Tungsten operates under the executive leadership of Christian Desjardins, the current Senior Executive Officer and Licensed Director. Tungsten obtained its Financial Services Permission (FSP) from the Financial Services Regulatory Authority (FSRA), authorizing it to conduct the Regulated Activity of Providing Custody in relation to Virtual Assets as an Authorized Person.

Tungsten holds the cryptographic keys in cold storage, maintaining them offline and isolated from internet access. Custody wallets are safeguarded with physical access controls similar to bank-grade security protocols. To move funds, a transaction with the Tungsten team must be initiated subject to passing rigorous security checks.

Notably, according to section 30(4)(a) of the Financial Services and Markets Regulations (FSMR), Tungsten operates within defined limitations and stipulations for its Regulated Activities. It does not deal with Retail Clients, as defined in the Conduct of Business (COBS) Rulebook.

In 2018, the ADGM established the first regulatory framework for virtual assets, setting a global benchmark. The United Arab Emirates (UAE) remains to be ahead of the curve, offering innovation-friendly regulations that ensure protection for institutional investors and businesses. Ultimately, this regulatory clarity is expected to attract a growing number of players, and bring new momentum to the UAE’s dynamic crypto scene.

THOUGHT LEADERSHIP

Receivables Financing: Bill Factoring and Bill Discounting

Account receivables, also known as trade receivables, serve as an important alternative financial asset within the trade finance industry in the United Arab Emirates (UAE). By financing receivables, businesses can better sustain day-to-day operations and mitigate credit defaults. The UAE has enacted laws and regulatory frameworks to support account receivables in trade finance. This includes legislation governing factoring and other receivables financing arrangements, offering legal clarity for businesses operating within the UAE.

Beginning with the definition provided in Federal Decree-Law No. (16) Of 2021 On Factoring and Transfer of Civil Accounts Receivables, factoring is a financial activity in the UAE defined as "A transaction whereby the assignor transfers the current or future debtor's accounts receivable, or both, to an assignee, or agrees that the assignee maintains and collects entries related to the transferred accounts receivable and provides protection to the assignee in case the debtor breaches the payment." Notably, the latter part of this definition sparks controversy, which will be addressed later in this article.

In other words, factoring occurs when a business sells its invoices to a third party. This third party, known legally as the assignee, then assumes the right to collect the invoiced amounts. This transaction effectively transfers ownership of the invoices from the original business (the assignor) to the assignee.

THOUGHT LEADERSHIP

Factoring activities may not be practiced in the UAE except after obtaining a license to do so from the Central Bank of the UAE (CBUAE). These activities must comply in accordance with the terms and conditions issued by a decision of the CBUAE.

A significant aspect of Federal Decree-Law No. 16 of 2021 is that receivables assignment agreements are effective in relation to future receivables. This provision introduces regulatory certainty and instills confidence among key industry stakeholders.

It is worth noting that there is often confusion between the activities of bill factoring and bill discounting. Unlike bill factoring, bill discounting lacks a clear definition, leading to the following distinction: Invoice discounting emerges as an alternative model within the scope of invoice financing.

However, in bill discounting, the business (i.e., the original creditor) retains the responsibility of collecting the invoice, unlike in bill factoring where the assignee, to whom the receivables are assigned, assumes this role.

Additionally, the said business retains control over its sales ledger in bill discounting, which raises questions regarding the transfer of ownership of the invoices, unlike in bill factoring. These two criteria highlight the principal distinctions between the two models.

Furthermore, another important criterion for discussion is confidentiality, specifically whether the client who initiated the invoice is informed of the arrangement between the assignor and the assignee. In practice, it is observed that most invoice discounting facilities are kept confidential, while most factoring facilities are disclosed. Indeed, it logically follows that when the assignee is responsible for collecting the debt (factoring), the client is automatically informed of the transfer. Conversely, when the assignor assumes debt collection (discounting), the certainty of confidentiality becomes less assured.

Some may question the rationale behind these two activities, both of which serve the same objective: enabling businesses to unlock liquidity and address their immediate cash flow requirements instead of waiting for full payment from clients at a later date. The primary purpose is to support business growth.

Furthermore, when considering the advantages and disadvantages, bill factoring offers certain benefits. For instance, both the assignor and the assignee possess the right to send notifications and payment instructions to the debtor regarding the accounts receivable. However, if the debtor receives notifications from both parties, only the assignee is authorized to issue payment instructions, ensuring clarity in payment processing. Additionally, the assignee retains the primary right, even in cases involving multiple debtor accounts receivable or divided or undivided rights in the debtor's accounts receivable.

THOUGHT LEADERSHIP

Small enterprises often prefer invoice factoring for its simplified approach, which absolves them from the responsibility of managing receivables collections, while simultaneously enabling access to a significant share of the value of the outstanding invoice.

While factoring is often viewed as the preferred activity, it's noteworthy that factoring without recourse may present a high risk for the assignor due to the potential of non-payment. Hence, recourse factoring typically emerges as the more prudent path.

THOUGHT LEADERSHIP

However, revisiting the initial discussion on the definition of factoring in Federal Decree-Law No. (16) Of 2021, it's highlighted that the assignee shall be afforded protection. Yet, this assurance seemingly contradicts with Article 10(2) of the same Federal Decree Law, which explicitly states, "The assignor shall not guarantee the ability of the debtor to pay, whether now or in the future." This discrepancy raises questions about the extent to which the assignee is genuinely safeguarded and whether recourse factoring remains viable in light of such a provision.

To mitigate the risk of nullifying recourse provisions and ensure the assignee is adequately protected without contravening existing legal stipulations, it is imperative that any recourse agreement is meticulously drafted to align with the prevailing legal framework.

AUTHORED BY

Yara Abou Zaki is a skilled law graduate with a Master's degree in General and Comparative Law from the Lebanese University. With over a year of legal experience, she excels in litigation, civil law, corporate and commercial law, and criminal law. Yara is a versatile legal professional who has prepared court filings, drafted legal documents, negotiated contracts, and conducted legal research. She is a quick learner and is meticulous with her work. She is Fluent in Arabic, French, and English, extending her proficiency to assisting clients in Arabic, French, and English, and handling documents in these languages as well.

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ROUNDUP

MEET OUR NEW TEAM MEMBERS

Jamal Abou Hassan brings with him a wealth of expertise in various facets of law. With a robust background in law and over five years of practice, Jamal's areas of specialization span a wide spectrum, including real estate, civil law, business law, intellectual property law, labour law, and taxation. His comprehensive understanding of financial services, FinTech, corporate governance structures, and restructuring adds a significant dimension to our legal offerings.

Jamal's proficiency extends beyond local jurisdictions, as he is well-versed in handling international business transactions and navigating the complexities of diverse regulatory frameworks. His adeptness in drafting legal documents and providing strategic advice ensures that our clients receive tailored solutions to their legal needs.

Jamal Abou Hassan
ASSOCIATE

Peter Haber
JUNIOR ASSOCIATE

Peter Haber holds a Master's degree in International Business Law from Université Paris Panthéon Assas and a Bachelor from Université Saint Joseph De Beyrouth. With a strong foundation in litigation, corporate and commercial law, Mergers and Acquisitions (M&A), and Intellectual Property Law, Peter has a diverse skill set to offer. Having worked alongside lawyer Aija Lejniece in International Arbitration and Crypto Assets, and gaining valuable experience in corporate law and franchising at Amrest France, Peter is well-equipped for complex legal challenges. He is fluent in English, French and Arabic. His skills enable him to navigate legal intricacies across different jurisdictions.

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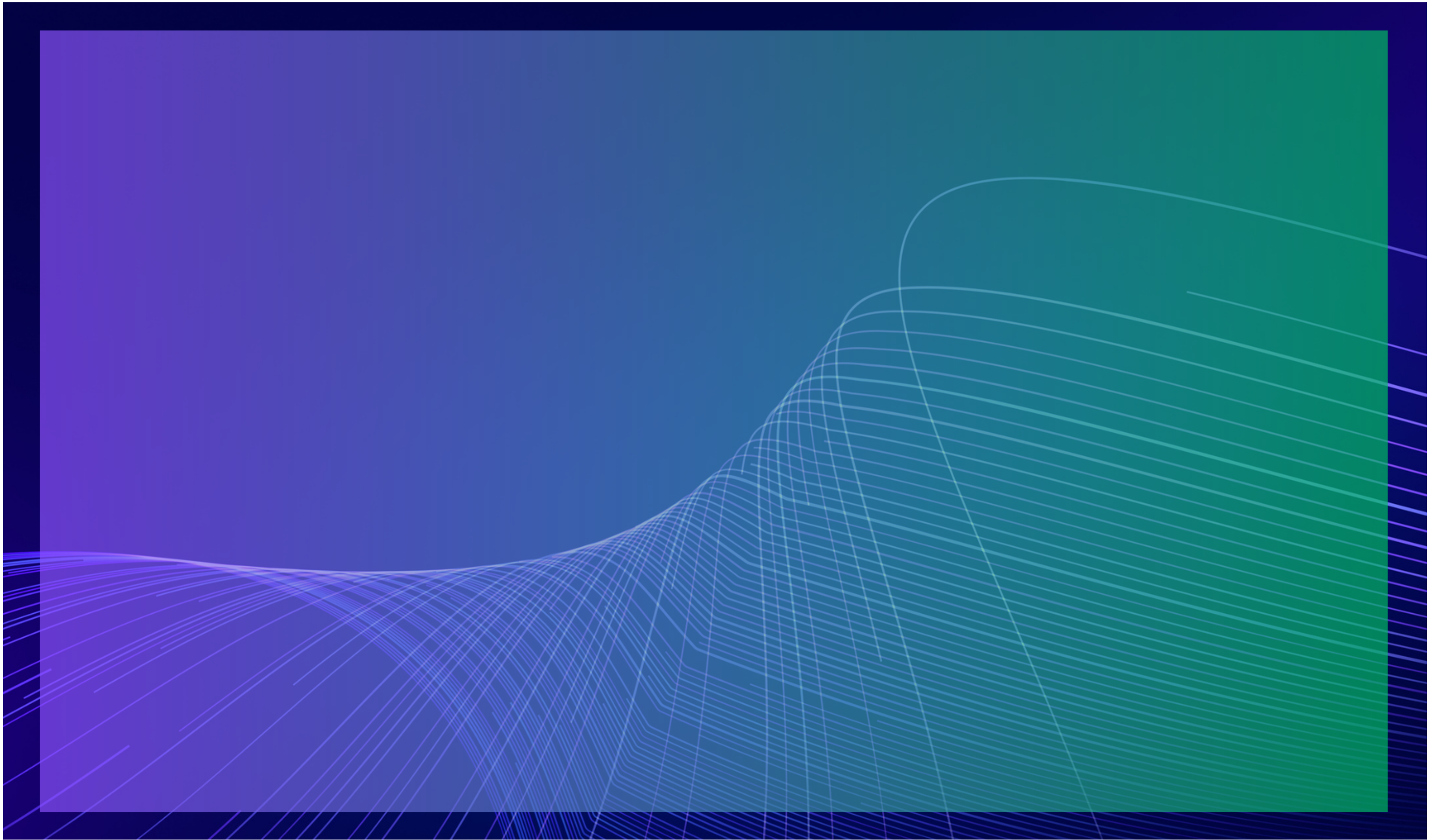
DRIVING CHANGE THROUGH INNOVATIVE EXPERTISE



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, The Law** and **more**.

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