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RASMANDATE

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

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COVER STORY

THE NEW DIGITAL ASSETS LAW NO. 2 OF 2024

The Dubai International Financial Centre (DIFC) recently enacted its Digital Assets Law, DIFC Law No. 2 of 2024 (the "DAL"), effective as of March 8, 2024.

Through the DAL, the DIFC established a framework to support digital assets innovation while promoting responsible practices and ensuring a secure and transparent market. Investors seeking growth opportunities will now find incentives and safeguards within the DAL.

Rationale and Objectives

Within its broader mandate, the DIFC aims to acknowledge the growing significance of digital assets, enhance market confidence and consumer protection, and foster innovation across the financial services sector and beyond.

Specifically, the DAL serves to establish and clarify legal principles applicable to Digital Assets, as defined in Part 2 thereof.

This legislation offers a clear definition of a Digital Asset, consisting of three key elements:

(i) a notional quantity unit: Digital Assets serve as a unit of account and may function similarly to traditional currencies or commodities.

(ii) independence from any particular person and legal system: In principle, Digital Assets operate on distributed ledger technologies such as blockchain and are independent from any central intermediary, ensuring they are not completely controlled by any single entity.

(iii) incapability of duplication and use: Digital Assets are endowed with cryptographic properties that serve as safeguards against unauthorized replication or counterfeit. These cryptographic features ensure that each Digital Asset unit is unique and cannot be duplicated.

Furthermore, the DAL characterizes a Digital Asset as an intangible property existing solely in digital form, that is neither a thing in possession nor a thing in action. By recognizing Digital Assets as property, similar to money or goods, the DIFC has resolved a fundamental issue and provided legal guidelines on the nature of Digital Assets.

Key Provisions

The DAL further establishes provisions regarding the control of Digital Assets. It stipulates that control is vested in an individual if they possess the exclusive ability to:

1. prevent others from obtaining substantially all the benefit from the Digital Asset;

2. obtain substantially all the benefit from the Digital Asset; and

3. transfer these aforementioned abilities to another person (referred to as a “change of control”).

Additionally, the Digital Asset must allow that person to identify themselves as possessing these abilities.

In this regard, the DAL also establishes that this same control confers original legal title to a person, contingent upon the intention to exercise control over the Digital Asset or the general intention to exercise control over Digital Assets in the Address in which the Digital Asset is located. Such title shall not cease to exist until it is either transferred or the Digital Asset is destroyed.

Moreover, the person who has control of a Digital Asset is presumed to have the superior legal title to it.

In particular, a transfer occurs when control of the Digital Asset shifts to the transferee, with the transferor intending to transfer title. In cases of gifting, title transfer is presumed unless proven otherwise.

Upon the death, incapacity, or insolvency of a person holding legal title to a Digital Asset, another person may assume control as per applicable law. This new holder can exercise rights over the Digital Asset and transfer title to a third party if the conditions of transfer of title are met.

The DAL also differentiates between reckless and intentional impairment, establishing liabilities for both categories. Defenses include consent or implied consent by a reasonable person in the affected party's position.

Co-owners may seek proportionate recovery. Moreover, liability extends to co-owners, and if a superior legal title emerges, the initial liable party must account to the new claimant.
A legal title holder may reclaim control from another who lacks legal title or possesses an inferior one.

Furthermore, the DAL elaborated on the intentional and unintentional impairment of the use of a Digital Asset, and recovery of their control. We anticipate that this could potentially create opportunities for litigation based on new legal grounds.

Modifications of DIFC Laws

The DAL introduces significant amendments to existing laws within the DIFC, such as the Contract Law, Insolvency Law, Law of Damage and Remedies, Personal Property Law, Trust Law, Foundations Law and Law of Obligations, and several Regulations.

Notably, these amendments accommodate emerging concepts such as "Coded Contracts" and "Electronic Trade Documents", reflecting the evolving landscape of digital transactions.
The DIFC also repealed the Law of Security (Law No. 8 of 2005) and replaced it by Law of Security, DIFC Law No. 4 of 2024.

Future Outlook

The enactment of the DAL establishes industry-defining benchmarks for regulating digital assets, and provides a key indication of the overall recognition within the UAE market of the important role that Digital Assets play within the broader financial market. These standards provide a starting point for the development of comprehensive legislation around Digital Assets, providing a foundation upon which further legislative efforts can build.
Furthermore, amid varying global regulatory stances towards digital assets – ranging from cautious skepticism to outright prescription – the DIFC remains steadfast in its commitment to protecting market integrity, enhancing governance and fostering an environment conducive to innovation and fintech within its jurisdiction.

LEGAL & REGULATORY UPDATE

HT Markets MENA ("Hex Trust") FZE has recently received the License from Dubai's Virtual Assets Regulatory Authority [VARA], enabling it to offer Broker-Dealer Services.

This follows the previous success of Hex Trust MENA FZE in November 2023, when it obtained the Minimum Viable Product (MVP) operational License for Custody Services, allowing it to offer bank-grade custody and associated services to Institutional Investors and sophisticated investors in the Emirate of Dubai.

Hex Trust's Dubai office is run by Filippo Buzzi, regional Director MENA of Hex Trust. Hex Trust acknowledges the enormous potential for virtual asset growth in the region, driven by progressive regulation, and a thriving ecosystem for virtual assets. Furthermore, Hex Trust is committed to upholding the highest standards of compliance.

With the evolving regulatory landscape of virtual assets, it is anticipated that more Virtual Asset Service Providers (VASPs) will be licensed by VARA, further enriching the virtual asset ecosystem in the region.

WHAT KEPT US BUSY

seamless MIDDLE EAST

Rasma Legal participated in the Seamless Middle East event, where we connected with key players in the payments, fintech, digital assets, banking, retail, and e-commerce sectors.

WHAT KEPT US BUSY

DUBAI FINTECH SUMMIT

We recently had the privilege of attending the long awaited Dubai FinTech Summit alongside industry leaders and innovators from around the globe. The summit included latest trends, challenges, and opportunities shaping the future of finance and technology.

Highlights included thought-provoking keynote speeches, engaging panel discussions, and networking with some of the brightest minds in fintech.

A big thank you to the organizers and speakers for an enlightening event!

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Central Bank of the UAE Introduces Open Finance Regulations

The Central Bank of the United Arab Emirates (CBUAE) has introduced the 'Open Finance Regulation ("Open Finance Regulation") outlining a framework for managing, overseeing, and operating an Open Finance Framework in the UAE.

Key Highlights:

- The issuance of Open Finance Regulation results in an amendment to the Retail Payment Services and Card Schemes Regulation.
- The Open Finance Regulation consists of a Trust Framework, an API Hub, and Common Infrastructural Services, which

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provide Open Finance access for the cross-sectoral sharing of data and the initiation of Transactions, on behalf of Users.

- Licensees mandated to provide Open Finance access will be onboarded in phases, starting with all Banks, including branches of foreign banks, and Insurance Companies (national companies and foreign branches) only.
- Open Finance Providers must separately obtain or hold the additional regulatory licenses required to undertake any other licensed activity or activities.
- All Licensees, whether or not they are engaged in the provision of Open Finance Services, must comply with the requirements of the Open Finance Regulation with regard to Data Sharing and Service Initiation by Users through Open Finance Providers and specifically the requirements in Articles 18 to 22 of the Open Finance Regulation.
- Participation in the framework is mandatory for all Licensees concerning the products and services they offer. Licensees, acting as Data Holders and Service Owners, must grant others in the Open Finance Framework access to customer data and the ability to initiate transactions on customer accounts and products, subject to user consent, security measures, and safe communication.

- Additionally, the Central Bank may issue further regulations to ensure the continuous improvement and adaptation of Open Finance Services.

- The 'Open Finance Regulation' will be published in the Official Gazette and will come into effect gradually, as notified by the Central Bank.

Conclusion:

The introduction of the Open Finance Regulation by the Central Bank of the UAE marks a significant milestone in the evolution of financial regulation in the country. By establishing a framework for Open Finance, the regulation promotes transparency, interoperability, and innovation in the financial sector. It sets the stage for enhanced competition, improved consumer services, and strengthened financial inclusivity. With its phased implementation and emphasis on compliance, the regulation underscores the Central Bank's commitment to ensuring a robust, dynamic, and resilient financial ecosystem in the UAE. As Open Finance takes root, it promises to unlock new opportunities and efficiencies, ultimately benefiting consumers and businesses alike.

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WHAT OUR CLIENTS SAY ABOUT US

"Engaging with Rasma was for me a very positive experience. Mazen and his entire team will make you feel very well taken care of at every step of the process. They exhibit the perfect combination of high competence and high integrity I was looking for in a legal partner. I highly recommend Rasma."

-R. Slim

"Excellent service and professionalism! It was a smooth and straight forward process, thanks to the team."

-Leen Al Ghaly

QNA WITH RASMA LEGAL

The Legislative Sources Governing Payment Regulations in the UAE

Q: What characterizes the regulatory landscape governing payment services in the United Arab Emirates (UAE)?

A: The regulatory landscape in UAE is diverse, with various regulators and regimes. At the forefront of this regulatory framework stands the Central Bank of the UAE (CB UAE), the principal monetary and financial services regulator at the federal level.

Q: Under what legislation does the CB UAE operate?

A: The CB UAE operates under the ambit of Federal Decree-Law No. (14) of 2018 concerning the Central Bank and the Regulation of Financial Institutions and Activities. The CB UAE oversees a comprehensive licensing regime for payment services within the UAE. As such, any entity seeking to provide payment services in the UAE must obtain a license from the CB UAE, thereby ensuring compliance with regulatory standards and fostering consumer protection.

Q: What are the main objectives of the CB UAE in regulating payment systems?

A: The CB UAE plays a pivotal role in upholding the integrity and efficiency of payment systems, thereby safeguarding the stability of the financial sector. Through its regulatory oversight, the CB UAE aims to promote innovation, enhance transparency, and facilitate the seamless operation of payment services within the UAE.

Q: What is the Stored Virtual Facilities Regulation 2020 (SVF Regulation)?

A: The SVF Regulation, which came into effect on the 15th of November, 2020, governs the supervision and licensing of stored virtual facilities (SVF) issuers, such as digital wallets, in the UAE, excluding financial free zones.

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Q: What are the key highlights of the SVF Regulation?

A: Licensing and Scope: Operating SVFs requires a license from the CB UAE, except for "single purpose SVFs" like closed-loop payment schemes.

- Inclusion of Crypto-assets: The Regulation expands its scope to include crypto-assets within the scope of SVF business and within the definition of SVFs and virtual assets. Crypto-assets are defined as digital representations of value or contractual rights using distributed ledger technology. This reflects the regulatory response to technological advancements and developments in this field. Therefore, any entity involved in issuing or operating in the crypto-asset realm outside of the financial free zones or on a cross-border basis must obtain the necessary licensing or approvals, depending on its current regulatory standing.

- Licensing Requirements: To apply for a license, the applicant must be a UAE-incorporated company, excluding financial free zones like DIFC and ADGM. This change allows global players to enter the UAE market more easily, departing from the previous requirement of partnership with commercial banks for retail payment service providers.

- Standards for entity governance: The Regulation imposes strict standards for corporate governance, overall risk management, internal controls, and accounting systems.

- Principal Business: Licensed SVF businesses must primarily engage in issuing SVFs, with exceptions subject to CB UAE approval.

- Licensed Banks: Banks holding licenses are not required to obtain an additional license for SVF schemes but must secure approvals to issue SVFs. They also have separate requirements regarding governance, risk management, and internal controls.

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Q: What is the Retail Payment Services and Card Schemes Regulation 2021 (RPSCS Regulation)?

A: The RPSCS Regulation, introduced by the CB UAE on June 6, 2021, outlines the criteria and regulations for obtaining a license to offer retail payment services in the UAE.

Q: What are the licensing categories under the RPSCS Regulation?

A: The Regulations outline four (4) license categories based on the type and quantity of services an entity intends to offer, along with requirements such as legal structure and capitalization.

For instance, a payment service provider wishing to offer services like issuing payment accounts, merchant acquiring, payment aggregation, payment instrument provision, or domestic fund transfers can apply for either a category I, II, or III payments license. In practical terms, this implies that PSPs focusing solely on one or more of these four retail payment services will probably aim to secure the most suitable and cost-effective of the three available payments licenses. The initial capital requirements for each payments license are likely to significantly influence this decision.

It is also important to note that the RPSCS does not extend to the following:
Payment transactions utilizing stored value facilities (as defined and regulated under the 2020 Stored Value Regulation).
Transactions involving commodity or security tokens.
Transactions involving virtual asset tokens.
Payment transactions encompassing remittances. The Regulations specify that "Remittance" pertains to cases where the payer lacks a payment account with the PSP.
Currency exchange operations where funds are not maintained in a payment account.
Any service beyond payment initiation and payment account information provision.

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Q: What services are included under the categories of the RPSCS Regulation?

A: These services encompass various digital payment offerings, and encompass 9 services: Payment Account Issuance, Payment Instrument Issuance, Merchant Acquiring, Payment Aggregation, Fund Transfer (Domestic and Cross-border), Payment Token, Payment Initiation, and Payment Account Information Services.

Furthermore, the RPSCS Regulation mandates that card schemes must also acquire a license from the CB UAE, specifying conditions for obtaining and maintaining such licenses. It empowers the CB UAE to monitor and potentially regulate the fees and charges levied by card schemes, if deemed necessary.

According to the RPSCS Regulation, no individual or entity may engage in the promotion of retail payment services without first obtaining the necessary license, except for banks licensed by the CB UAE that offer such services, and finance companies issuing credit cards, provided they adhere to specific conditions.

Q: What is the Retail Payment Systems Regulation 2021 (RPS Regulation)?

A: The RPS Regulation is crafted with the main objective of safeguarding the safety and efficiency of financial infrastructure systems, thereby fostering their seamless and effective operation.

This regulatory framework delineates the major obligations and requirements incumbent upon designated RPS, while also outlining the CB UAE’s authority in overseeing their operations.

Notably, this regulation extends its purview to systematically important RPS meeting specific criteria, including those operating within the UAE or facilitating payment obligations denominated in the UAE's currency or any other regulated medium of exchange.

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Q: What types of payment systems fall under the RPS Regulation?

A: The term "Retail Payment System" includes a range of fund transfer mechanisms such as cheques, credit transfers, direct debits, card payments, or any regulated medium of exchange, handling substantial volumes of relatively low-value transactions.

Through the RPS Regulation, the CB UAE elucidates its policies and procedures concerning the licensing and designation of RPS. It articulates the types of RPS covered, interprets key designation criteria, outlines the licensing and designation processes, specifies ongoing requirements for designated RPS, and provides an avenue for appeals regarding licensing, designation, and related actions.

Q: What is the Large Value Payment Systems Regulation 2021 (LVPS Regulation)?

A: Circular No. 9/2020, effective from 10/2/2021, in relation to Large Value Payment Systems (LVPS) Regulation addresses licensing prerequisites concerning LVPS and delineates the obligations and continual requisites applicable to designated LVPS.

Large value payment systems are defined, according to this regulation 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”.

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Q: What entities fall under the LVPS Regulation?

A: The LVPS Regulation extends its scope to encompass two primary categories:
LVPS operated within the UAE.
LVPS facilitating the clearing or settlement of transfer orders denominated in AED currency, irrespective of their location, whether within or outside the UAE.

Q: How does the CBUAE ascertain the eligibility of an LVPS for designation and compliance with the designation criteria?

A: The CB UAE is empowered to request information or documents related to the LVPS. This authority to request information or documents applies to LVPS, individuals, or corporations established, located, or incorporated within or outside the UAE.

Moreover, the CB UAE may collaborate with competent regulatory authorities, such as the Securities & Commodities Authority, or other relevant authorities in different jurisdictions to procure the necessary information and documents.
In essence, the LVPS Regulation underscores the CB UAE's commitment to thorough oversight and regulation of LVPS, ensuring transparency, integrity, and compliance with regulatory standards, both domestically and internationally.

Q: What is the role of financial free zones in the UAE's payment regulation?

A: Within the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC) financial services, including payment services, are regulated by the Financial Services Regulatory Authority (FSRA) and the Dubai Financial Service Authority (DFSA), respectively. In ADGM, the regulatory framework is established under the Financial Services and Market Regulations 2015 (FSMR), along with its associated rulebooks. Similarly, in DIFC, the regulatory framework is governed by DIFC Law No.1/2004 and its rulebooks. Both frameworks categorize payment services under the 'Providing Money Services' license.

ROUNDUP WHAT WE ACHIEVED

We are proud to announce our shortlisting for the Women in Business Law Awards EMEA 2024:

- **United Arab Emirates Firm of the Year**
- **MENA Firm of the Year**
- **Technology Lawyer of the Year:** Asma Shah, **Senior Associate**
- **Privacy & Data Protection Lawyer of the Year:** Asma Shah, **Senior Associate**

WOMEN IN BUSINESS LAW AWARDS 2024

At Rasma Legal, we believe in empowering women to thrive and excel in the legal profession. These nominations inspire us to continue fostering an environment where talent and dedication are recognized irrespective of gender.

Congratulations to all the exceptional women in law who are breaking barriers and setting new standards of excellence. Your achievements inspire us all.

LexisNexis

We are delighted to announce that Rasma Legal has been shortlisted for the LexisNexis Middle East Awards in two prestigious categories:

- **AI Legal Innovator of the Year**
- **Award for Employee Well-Being**

As a firm we are committed to innovation in the legal sector and are dedicated to creating a supportive and healthy work environment for our team.

We congratulate all the shortlisted firms and look forward to the final awards.