

UAE: Securities and Commodities Authority issues new regulations relevant to virtual assets - paving the way for the UAE's new onshore Federal VA framework

In brief

The United Arab Emirates' (UAE) federal-level financial services regulator relevant to securities, commodities and now Virtual Assets Service Providers (VASPs), the UAE Securities and Commodities Authority (SCA), has just issued two new regulations relevant to Virtual Assets (VAs):

1. SCA Chairman of the Board of Directors' Decision No. (26/RM) of 2023 in relation to Virtual Assets Platform Operators ("**SCA VA Exchange Regulations**").
2. SCA Chairman of the Board of Directors' Decision No. (27/RM) of 2023 amending SCA Chairman of the Board of Directors' Decision No. (13/RM) of 2021 in relation to the SCA Rulebook ("**SCA Rulebook Amendments Regulations**").

This follows the end of the grace period under UAE Cabinet Resolution 111 (that ended on 14 September 2023) for those conducting VASP activities within Onshore UAE (see Annex) to register with the SCA.

Both the SCA VA Exchange Regulations and the SCA Rulebook Amendments Regulations (together "**New SCA Regulations**") are only currently available in Arabic (which is the official and authoritative version of the regulations). As such, all English translations of provisions mentioned herein are the unofficial Baker McKenzie English translations of the authors. SCA's own unofficial English language translations of the New SCA Regulations will likely be available in due course.

In more detail

Following a number of key regulatory developments in the UAE's VA space, in particular UAE Cabinet Resolution 111 (see Annex) where the SCA was established as the UAE's federal-level VASP regulator, the SCA has now issued new regulations relevant to VA exchanges (outlining an 'Accepted Virtual Asset' approach, similar to that found in the DIFC and ADGM). This is a positive development for the UAE and helps clarify what the relevant VA regulations are at a federal level at the SCA (with the SCA VA Exchange Regulations now formally repealing the previous SCA Crypto Regulations). This sets the tone for what the SCA will likely do in the following months in terms of potential and anticipated subsequent VA-related regulations across additional activities.

Although VARA has its own VA issuance regime within the Emirate of Dubai (excluding the DIFC), and whilst UAE Cabinet Resolution 112 outlines that VARA's decisions shall be consistent with the decisions issued by the SCA, it has yet to be seen whether there will be joint cooperation and coordination between the SCA, the DFSA (in the DIFC) and the FSRA (in the ADGM), particularly whether differences will emerge between the SCA's 'Accepted Virtual Asset' List, the DFSA's 'Recognized Crypto Token' List, and the FSRA's 'Accepted Virtual Asset' List. Whilst the methodologies for review appear to be similar, a joint VA regulatory committee could avoid such differences and help ensure uniformity across all three financial services regulatory jurisdictions.

Additionally, in light of new rules and capital requirements for those seeking to engage in VASP-related activities, as well as technical requirements relevant to VA wallets, the New SCA Regulations continue the UAE's development as a virtual assets friendly jurisdiction.

The SCA VA Exchange Regulations

The SCA VA Exchange Regulations define VAs as a "digital representation of a value that can be traded or digitally transferred and can be used for investment purposes, and does not include digital representations of fiat currencies, securities, or other funds".

The SCA VA Exchange Regulations clarify that VA Exchange Platform Operators will be subject to certain provisions of:

1. The SCA Board of Director's Decision No. (2/R) of 2001 concerning the Regulations as to Trading, Clearing, Settlement, Transfer of Ownership and Custody of Securities, as amended ("**SCA Trading & Settlement Regulations**").
2. The SCA Rulebook (SCA Chairman of the Board of Directors' Decision No. (13/RM) of 2021).

The SCA have taken a similar approach to that of the DIFC's DFSA and the ADGM's FSRA (both of which have taken a 'Recognized Crypto Token' / 'Accepted Virtual Asset' approach) in that no VAs may be traded on such platforms unless approved on the SCA's Official List of Virtual Assets.

With the exception of the UAE's Financial Free Zones (the DIFC and ADGM, which constitute separate financial services jurisdictions under both the UAE's Constitution and UAE Federal Law), VA's may only be traded in the UAE upon being licensed by the SCA, or by the "competent authority", which is reference to VARA's ability to register VAs within the Emirate of Dubai (excluding the DIFC) under VARA's VA Issuance Rulebook, VARA's Exchange Services Rulebook, and VARA's Virtual Assets and Related Activities Regulations 2023.

The SCA VA Exchange Regulations outline a number of duties and obligations for licensees, including but not limited to technology-related governance, stress-testing of systems and controls, relevant disclosures, short selling and trading-related controls, and compliance with the UAE's federal anti-money laundering (AML) and Combatting the Financing of Terrorism (CFT) law - UAE Federal Decree-Law No. 20/2018 on Combating Money Laundering Crimes, the Financing of Terrorism and the Financing of Unlawful Organizations, which was updated in September 2021 (by virtue of UAE Federal Decree-Law No. (26) of 2021) to specifically include and add VASPs within the full scope of the law's obligations in the same way as regulated financial institutions.

The SCA Rulebook Amendments Regulations

The second of the New SCA Regulations, the SCA Rulebook Amendments Regulations, amends certain provisions of the SCA Rulebook in relation to VAs and includes VAs to the list of products that may be dealt or brokered by SCA-regulated financial institutions.

For example, the definition of 'Brokers', 'Dealers of Financial Products', 'Financial Consultation', 'Portfolio Management' and 'Custody' services, all now extend to and cover VAs, with relevant compliance-related obligations.

Additionally, a new Category 7 License in relation to VASPs has been added to the SCA Rulebook, outlining the following capital requirements:

1. A capitalization of AED 1 million plus six months of operating expenses if the activity is operating a VA Exchange Platform only.
2. A capitalization of AED 2 million if the activity is the Brokerage of VAs.
3. A capitalization of AED 4 million plus six months of operating expenses if the activity is the Custody of VAs.
4. A capitalization of AED 5 million plus six months of operating expenses if the operator of a VA Exchange Platform provides any other VA service.

Finally, further to the "Guidelines for Financial Institutions adopting Enabling Technologies" document jointly issued in November 2021 by the SCA, the DFSA, the FSRA and the CBUAE, the SCA Rulebook Amendments Regulations outline a robust technical framework for VA wallets, including provisions relevant to private keys, third-party outsourcing, risk management, the origin and destination of VA funds, and safeguarding mechanisms.

Annex

Overview of the Evolution of the UAE's Financial Regulatory Framework and Understanding the Crypto / VA Regulatory Space

The UAE contains three separate financial services jurisdictions:

1. That of the Dubai International Financial Centre (DIFC), which has its own financial services regulator - the Dubai Financial Services Authority (DFSA) - which is a Financial Free Zone in the UAE having its own separate commercial and civil laws, and even court system, based on a common law approach (where English is the governing language of law and regulations).
2. That of the Abu Dhabi Global Market (ADGM), which also has its own financial services regulator - the Financial Services Regulatory Authority (FSRA) - which, like the DIFC, is a Financial Free Zone in the UAE based on a similar model; and

3. The territory that makes up the rest of the UAE (i.e., the Emirate of Dubai other than the DIFC, the Emirate of Abu Dhabi other than the ADGM, and the rest of the other five emirates that make of the federation of the UAE), which has two federal-level financial services regulators – the SCA (as mentioned above), as well the Central Bank of the UAE (CBUAE) (territory often referred to as "**Onshore UAE**"). From a financial services regulatory perspective, the remit of the SCA and CBUAE also extends to the more than 40 multidisciplinary Free Zones that are not Financial Free Zones (i.e., not the DIFC and ADGM - such as the Dubai Multi Commodities Centre (DMCC), Dubai Silicon Oasis (DSO), Dubai Internet City (DIC), Dubai World Trade Centre (DWTC), and the newly established RAK Digital Oasis in the Emirate of Ras Al Khaimah).

The ADGM's FSRA was the first jurisdiction in the region to issue dedicated crypto, VA and Digital Securities guidance in relation to its financial regulatory framework back in June 2018, issuing its guidance on Initial Coin Offerings (ICOs) in October 2017. The DIFC's DFSA also issued its Crypto Token regime more recently in November 2022 (having issued its Investment Token framework in October 2021) (see our previous client alert here).

In terms of Onshore UAE, the SCA issued its first crypto-related regulations in November 2020 - the SCA Chairman of the Board of Director's Decision No. (23/RM) of 2020 concerning the Crypto Assets Activities Regulation (the previous "**SCA Crypto Regulations**") - which followed a similar approach to those found in other jurisdictions, such as the Swiss Financial Market Supervisory Authority (FINMA), in outlining the regulatory treatment of Security Tokens, Commodity Tokens, Regulated Commodity Tokens, and also provided regulations on 'Crypto Asset Exchanges' amongst other VASP activities.

In July 2021, the CBUAE issued its Retail Payment Services and Card Schemes Regulation ("**RPSCS Regulation**") which for the first time addressed Payment Tokens, Payment Token Exchanges, issuing Payment Tokens, and other Payment Token-related services. Prior to this in September 2020, the CBUAE issued its Stored Value Facilities Regulation ("**SVF Regulations**") relevant to (amongst other things) wallet facilities covering VAs (which repealed the lack of clarity under the CBUAE's previous Regulatory Framework For Stored Values and Electronic Payment Systems issued in December 2016 ("**EPS Regulations**"), under which "Virtual Currencies" were stated to be prohibited - although this was clarified in subsequent statements by the then CBUAE Governor in February 2021, as not applying to cryptocurrencies such as Bitcoin and other digital currencies). The CBUAE has also been exploring Central Bank Digital Currencies (CBDCs) since 2020 with its pilot project with the Saudi Central Bank - 'Project Aber' - and more recently in March 2023 with the launch of its 'Digital Dirham' strategy.

Following the launch of the Dubai Blockchain Strategy in 2016 (the Emirates Federal Blockchain Strategy being launched in 2018), an Emirate of Dubai-level law (Dubai Law No. (4) of 2022 Regulating Virtual Assets in the Emirate of Dubai) was issued in February 2022, establishing a new regulatory authority for the emirate, the Virtual Assets Regulatory Authority (VARA) - the world's first dedicated VA-sector regulator. Although based in the DWTC Free Zone, VARA's remit covers all of the Emirates of Dubai, including the non-Financial Free Zones, with the exception of the DIFC (which is a Financial Free Zone). VARA subsequently issued its Virtual Assets and Related Activities Regulations 2023, and its suite of Rulebooks (covering conduct, compliance, risk and technology requirements for VASPs based in Dubai, VA issuance, and various activity-specific Rulebooks), in February 2023.

Since the territory that VARA regulates within Dubai overlaps with the SCA's remit within the emirates (although the SCA's remit extends further as the federal regulator), two UAE Cabinet Resolutions were issued in December 2022 to clarify the regulatory parameters and relationship between the two authorities:

1. UAE Cabinet Resolution No. (111) of 2022 Concerning the Regulation of Virtual Assets and their Service Providers ("**UAE Cabinet Resolution 111**").
2. UAE Cabinet Decision No. (112) of 2022 on Delegating Certain Competencies related to the Regulation of Virtual Assets ("**UAE Cabinet Resolution 112**").

UAE Cabinet Resolution 111 established the SCA as the federal-level VASP-sector regulator (beyond being the federal capital markets regulator), covering all VASP-related activities, outlining various competencies of other "Local Licensing Authorities" (which only includes VARA at the moment), and making it clear that the SCA would retain sole regulatory remit over "digital securities" and "digital commodities" in Onshore UAE. Separately, UAE Cabinet Resolution 112 outlined the relationship between the SCA and VARA in particular, whereby there will be joint regulatory roles between the two authorities through delegated authorities (granted to the SCA under UAE Cabinet Resolution 111) to VARA accordingly.

Following the publication of UAE Cabinet Resolution 111, the SCA Crypto Regulations were removed from the SCA's website, which left the market unsure as to whether it had been repealed by the resolution, or if it still remained in place as a matter of law (although under the understanding that SCA would be issuing new regulations in the coming months).

The SCA VA Exchange Regulations now officially repeals the SCA Crypto Regulations, providing much needed clarity to the market.

Baker McKenzie have advised extensively on a whole range of virtual assets, crypto, and other FinTech-related regulatory and compliance issues. From exchanges and AI in financial services, to NFTs, Web3, DAO, metaverse projects, and blockchain-enabled gaming, our team in the UAE cover the entire Middle East and North Africa (MENA) region, and work within a global team of FinTech and blockchain legal experts, and have expertise in coding and computer science.

To speak to us in relation to the New SCA Regulations, virtual assets, crypto and FinTech matters, or financial regulatory issues more generally, please reach out to the Baker McKenzie contacts above.

For future updates, you can visit and subscribe to our Middle East Insights blog: me-insights.bakermckenzie.com/

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