



# Crypto regulation in the UAE

Last updated in July 2022



# Introduction

**The regulatory situation for virtual assets and related services in the UAE is rather complex. The key aspects that determine which legal frameworks are applicable to any party interested in conducting business in the space of virtual assets are:**

- what type of virtual assets are involved in your business model
- where inside the UAE you want to undertake activities (ie which emirate or free zone)
- what activities you plan to undertake (ie brokerage, operating an exchange, advising on a product).

In this document we look at the core pieces of current UAE legislation to give an overview of what they involve, the type of assets they regulate, and the types of virtual asset-related services covered under a licence from the concerned authority.

## Authored by:



**Julia Ofer, Senior Counsel**

[j.ofer@taylorwessing.com](mailto:j.ofer@taylorwessing.com)

## The Abu Dhabi Global Market

In the Abu Dhabi Global Market (ADGM), publications for guidance on initial coin offerings and virtual currencies were made as early as October 2017. Since 2018 the regulator, the Financial Services Regulatory Authority (FSRA) has regulated virtual assets (previously referred to as crypto assets) and updates the Financial Services and Markets Regulations 2015 (FSMR) regularly to keep up with industry developments.

Various supplementary guidance statements under the FSMR have been published since and are being updated, including the guidance notes on 'Regulation of Initial Coin/Token Offerings and Crypto Assets under the Financial Services and Markets Regulations', 'Regulation of Digital Securities Activities in ADGM', 'Regulation of Digital Security Offerings and Virtual Assets under the Financial Services and Markets Regulations', and 'Regulation of Virtual Asset Activities in ADGM'.

The FSRA framework for virtual assets, digital securities, and Initial Coin Offering (ICO) is relevant for all parties that undertake or intend to

conduct business involving digital assets in or from the ADGM free zone.

We understand that where an ICO is issued abroad but offered to the public in the ADGM, the issuer has to obtain approvals from the FSRA, except where the potential buyers located in the ADGM would be excluded from participation.

It is worthwhile mentioning that the FSRA aims to provide regulation for the conduct of regulated financial activities, as opposed to aiming to regulate the technology itself used to conduct the regulated financial activities. Therefore, at the outset, where virtual tokens are used as a mechanism to enable or facilitate a regulated financial activity to be carried out, they are generally permitted.

Furthermore, the overall approach taken by the FSRA under the Virtual Asset Framework is to determine on a case-by-case basis whether a particular virtual asset, coin or token is considered a security or a commodity.

The category of digital asset determines the details of the

regulatory approach, with the following differentiations being made at the ADGM by the FSRA:

- **'Virtual assets'** in relation to the ADGM's Virtual Asset Framework means 'a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status in any jurisdiction. A virtual asset is: (a) 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 (b) distinguished from fiat currency and e-money.'

This includes for example non-fiat virtual currencies, or crypto 'exchange tokens'. They are generally treated as commodities. However, any market intermediaries (eg broker dealers, custodians, asset managers) dealing in or managing virtual assets, or any multilateral trading facilities using virtual assets, need to be licensed by the FSRA in accordance with the FSMR.

It is important to note that only activities in 'Accepted Virtual assets', meaning virtual assets that, in the opinion of the FSRA, meet the requirements applicable for a person licensed to conduct regulated financial activities when conducting a regulated financial activity in relation to virtual assets, will be permitted.

The FSRA has sole discretion in that respect, but we understand focuses for the time being on seven key factors, including inter alai security, traceability, but also efficiency and whether the asset is available on other exchanges already.

Approval must be requested for each virtual asset by the persons that wish to use them as part of their business.

While not considered a virtual asset and hence not covered under the Virtual Assets Framework, e-money activities are considered to be covered by and regulated under the FSRA's Payments Regulatory Framework.

Capital formation activities (ie software development or dissemination for mining of virtual assets) are however, currently not provided for under the Virtual Asset Framework or another FSRA framework, and such the understanding is that such activities are not envisaged to be undertaken in or from the ADGM at this stage.

- **'Digital securities'** (eg digital/virtual tokens that have the features and characteristics of a classic financial security (eg shares, debentures and units in an investment fund)) – are deemed to be securities in accordance with clause 58(2)(b) of the FSMR.

As a result, all financial services activities in relation to digital securities, for example arranging deals or advising on digital securities, providing custody, operating markets, as well as trading of or managing investments in digital securities, are all financial service activities that require a financial services licence from the FSRA in accordance with the FSMR.

- **Derivatives and collective investment funds of virtual assets, digital securities and utility tokens** are all considered to fall into the category of 'Specified Investments' under the FSMR and are as such regulated activities. Market intermediaries and market operators dealing in such derivatives and collective investment funds will need to be licensed by FSRA as Financial Service Permission holders, Recognised Investment Exchanges or Recognised Clearing Houses, as applicable.

For all of the three aforementioned assets, anyone applying for a regulated financial services licence will not only need to adhere to the Virtual Assets Framework, but like other regulated person at the ADGM will also need to comply with the wider regulatory framework of the FSRA, including relevant chapters of the Conduct of Business Rulebook (COBS), the General Rulebook (GEN), the Anti-Money Laundering and Sanctions Rules and Guidance (AML), and the Rules of Market Conduct (RMC).

For example, minimum capitalisation requirements are to be met by applicants in the same format as 'traditional' financial service providers would have to evidence appropriate capital. Customer due diligence and risk assessment, as well as record keeping obligations are also equally applicable.

Additional requirements addressing the technology-specific points have been included in the rulebooks and such obligations and requirements are expected to develop further as technology evolves.

- **'Utility tokens'** (eg tokens typically provided using a distributed ledger technology platform, which can be redeemed for access to a specific product or service, and that do not exhibit the characteristics of a regulated investment under the FSMR) are treated as commodities and, therefore, not deemed 'Specified Investments' under the FSMR for which a licence to conduct regulated financial services would need to be obtained.

Consequently, except where utility tokens are seen as accepted virtual assets, transactions in utility tokens and spot trading are not captured and legislated for in the FSMR and/or the FSRA Market Rules.

- **'Fiat tokens'** (eg stablecoins whose value are fully backed by underlying fiat currencies) are considered as a form of digital representation of fiat currency and its use as a payment instrument will typically fall within the regulatory framework of Providing Money Services.

The overall approach of a case-by-case review is also adopted by the FSRA to determine whether an ICO may be regulated under the FSRM, and the FSRA will be considering the characteristics exhibited by the token.

The reasoning behind this is that issued ICO's may either be financial or non-financial in nature. Tokens with characteristics of securities, referred to as 'digital securities', will fall under FSMR with the Markets Rule and the related comprehensive legal framework will apply.

We understand that for the time being the FSRA expects that offers of digital securities being made in or from the ADGM should be linked to the relevant issuers seeking admission of their securities to trading on recognised investment exchanges or multilateral trading facilities operating within the ADGM as well.

Furthermore, the FSRA currently does not allow listings of digital securities within the ADGM (on a secondary listing basis) where the primary listing is in a jurisdiction outside the ADGM that may not be fully accessed or considered suitable by the FSRA.

The FSMR clearly outline that a licensed digital asset exchange is required to be regulated like a multilateral trading facility and an exchange is required to comply with all 'traditional' oversight processes, including but not limited to:

- KYC and AML procedures
- transaction recording
- transparency and public disclosure
- settlement processes
- market surveillance.



For the avoidance of doubt, as the FSRA differentiates between trading of virtual assets and the trading of digital securities, recognised investment exchanges or multilateral trading facilities operating within ADGM will need to obtain approvals from the FSRA prior to providing services in relation to either of the digital assets (even if it already has approval to conduct service for one asset).

Non-financial tokens will not fall under the FSMR and Markets Rule, making their offering or trading unlikely being considered as regulated financial activity. The FSRA warns the public about the high risks involved in such business, but also invites the industry to develop best practice standards for such ICOs.

## The Dubai International Financial Centre

Contrary to the FSRA in the ADGM, in the Dubai International Financial Centre (DIFC) the Dubai Financial Services Authority (DFSA) has for a long time avoided regulating crypto assets. However, it finally published its Regulatory Framework for investment tokens in October 2021 including such tokens into the existing investment regime of the DFSA following the rationale that such investment tokens are considered by the DFSA as a form of financial instrument.

The regime applies to persons engaged in marketing, issuing, trading or holding Investment Tokens in or from the DIFC. It also applies to DFSA authorised firms wishing to undertake 'financial services' relating to investment tokens, including but not limited to advising on, dealing in, or arranging transactions relating to, Investment Tokens, or managing collective investment funds or discretionary portfolios investing in Investment Tokens.

For the avoidance of doubt, the Investment Token regime is an addition to the existing regulated financial services regime and

the DFSA rulebooks applicable to 'traditional' financial services providers apply *mutatis mutandis*.

Under the DFSA's framework a **'token'** is defined as a 'cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using distributed ledger technology or other similar technology' and an 'investment token' is defined as either a 'security token' or a **'derivative token'** and as a result covers:

- securities (for example shares) and derivatives in the form of a cryptographically secured digital representation of rights and obligations, which is issued, stored, and transferred using distributed ledger technology or other similar technology
- a cryptographically secured digital representation of rights and obligations, which is issued, transferred, and stored using distributed ledger technology or other similar technology and:
  - (a) gives rights and obligations that have a substantially similar

nature to those granted by a security or derivative; or (b) have a substantially similar effect to or purpose of a security or derivative.

Consequently, key cryptocurrencies and stablecoins as well as other crypto assets, virtual assets, or digital assets are currently not yet regulated in DIFC by the DFSA or otherwise and there are no firms regulated by the DFSA licensed for such activity in the DIFC.

Taking into account that tokens are stored in so-called 'digital wallets' and accessed using a combination of public and private cryptographic keys the DFSA has however, introduced custody requirements in its expanded regulatory framework covering digital wallet service providers.

Changes to the legal framework at the DIFC can be expected soon. The consultation period for the Consultation Paper No. 143 for the Regulation of Crypto Tokens has just ended at the beginning of May 2022. Noting the proposed definition of '**crypto token**' as a cryptotoken that is used, or is intended to be

used, as a medium of exchange or for payment or investment purposes but excludes an investment token, or any other type of investment, or an excluded tokens, the envisaged new regime would be comprehensive.

Similar to the FSRA at the ADGM, the DFSA is proposing an approach limiting the types and numbers of crypto tokens that can be used. It is intended that the DFSA will be making its assessments on a case-by-case basis determining what crypto token will be considered suitable and included on a list of 'accepted crypto tokens'.

Only an Accepted crypto token can be used by entities wishing to provide a financial service in or from the DIFC in relation to a crypto-token or a crypto token derivative.

The activities included in the consultation paper suggest that the activities advising on investments, operating an exchange, providing custody, arranging custody, operating a clearing house and operating an alternative trading system would be available for activities connected to crypto token.

Trading of an accepted crypto Token is suggested to be permitted in a similar framework as already implemented for investment tokens, using venues licensed as authorised market institutions or as multilateral trading facilities. A noteworthy difference is that trading via an organised trading facility would not be permitted if legislation will be issued in line with the consultation paper.

Being included in the proposed category of '**excluded token**', utility tokens, non-fungible tokens (NFT), and Central Bank digital currencies would continue to be outside of the new regulatory regime of the DFSA.

With respect to NFTs however, it is noteworthy that in the view of the DFSA it is the NFT's characteristics and its function that are relevant for the exemption, regardless of the use of marketing terms or terminology.

Service providers and creators of NFTs are warned by the DFSA that they should properly consider whether making an offer or providing services related to NFTs in or from the DIFC would require the DFSA's approvals. We understand that the DFSA is considering whether NFT-related activities that would fall outside of the DFSA's proposed regulatory regime should be considered as Designated Non-financial Business and Profession under the relevant DIFC regime.

If this approach would be adopted, then NFT issuers and related service providers would need to register with the DFSA and would be subject to the DFSA's Anti-Money Laundering rules, including the need to appoint a money laundering reporting officer.



## The UAE – federal level

In 2020 the UAE Central Bank (CB) issued the Stored Value Facilities Regulation (SVF Regulation) which regulates businesses that issue or operate a stored value facility, meaning non-cash facilities into which users prepay money or other values within the UAE, whereby crypto and virtual assets may be accepted in exchange for the storage of value.

In 2021, the CB issued the Retail Payment Services and Card Schemes Regulation (RPSCS Regulation) which regulates activities relating to payment tokens (ie stablecoins) in the UAE.

The Chairman of the Authority's Board of Directors' Decision No. 23 of 2020 concerning crypto assets Activities Regulation (**CAAR**) regulates the promotion, offering, issuing, provision of custody services, operation of an exchange, listing and trading of crypto assets and related financial activities in the UAE.

Promotion, marketing, advice, brokerage, and fundraising all fall within the range of financial activities that are regulated in the UAE.

Here a '**crypto asset**' is defined as 'a record within an electronic network or distribution database functioning as a medium for exchange, storage of value, unit of account, representation of ownership, economic rights, or right of access or utility of any kind, when capable of being transferred electronically from one holder to another through the operation of computer software or an algorithm governing its use'.

A differentiation is made between '**security token**' defined as 'A security [meaning shares, bonds and financial bills issued by joint stock companies, bonds and bills issued by governments and public authorities in the UAE, and any other financial instruments accepted by SCA] to the extent issued, transferred or traded in the form of a crypto asset or a Crypto Asset that is deemed to be a security pursuant to Article (4) of this Regulation, subject to the exclusion stipulated in in Article (3/ Second/ 3) of this Regulation', and '**commodity token**' being defined as 'crypto asset that is not a security token'. Although the framework regulates both kinds of token, establishing substantial submission or approval requirements,

the regulatory requirements for security tokens are higher. In each case, the Securities and Commodities Authority (SCA) determines in its sole discretion what token is classified as a security token.

The CAAR does explicitly not apply to:

- crypto assets issued by the federal government, local governments, governmental institutions and authorities or any companies that are owned by these authorities
- a currency (whether virtual, digital, unit of stored value or any other payment unit) issued through a system licensed, approved or required to be approved by the UAE CB pursuant to its regulations
- securities held in a de-materialised form in a clearing or settlement system by a custodian or depository and securities not issued as crypto assets but managed using an electronic keeping method controlled by the offering person or its approved registrar, unless otherwise qualifying as a crypto asset.

SCA Decision No. 11 of 2021

concerning Guidance for Crypto Asset Regulations provides further detailed guidance on the rules applicable to various activities categorised on the type of investor involved.

Licensing applications relating to crypto assets can include financial services activities such as promotion and marketing, issuance and distribution, advice, as well as brokerage, custody and safekeeping, fundraising, or operating an exchange. Minimum capital requirements for each category are stipulated as well.

The Chairman of the Authority's Board of Directors' Decision No. 13 of 2021 on the Regulations Manual of the Financial Activities and Status Regularisation Mechanisms (SCA Rulebook) was also issued in 2021 by the SCA, establishing a requirement for any person who wishes to conduct specified financial activities (Financial Activities) inside the UAE to apply to the SCA for a licence or approval.

Following very recent changes to the SCA Rulebook including adding digital activities into the scope of the SCA Rulebook, it is clear that the SCA is the sole authority in the UAE (excluding ADGM and DIFC) for licensing, supervising and overseeing the virtual assets activities and services issued for investment purposes. On the other hand, where virtual assets are issued for payment purposes, the CB is the authority in charge.

The SCA has also joined recent international efforts to develop a regulatory framework to address the risks of money laundering and terrorist financing related to virtual assets and virtual asset service providers conducting business in the UAE.

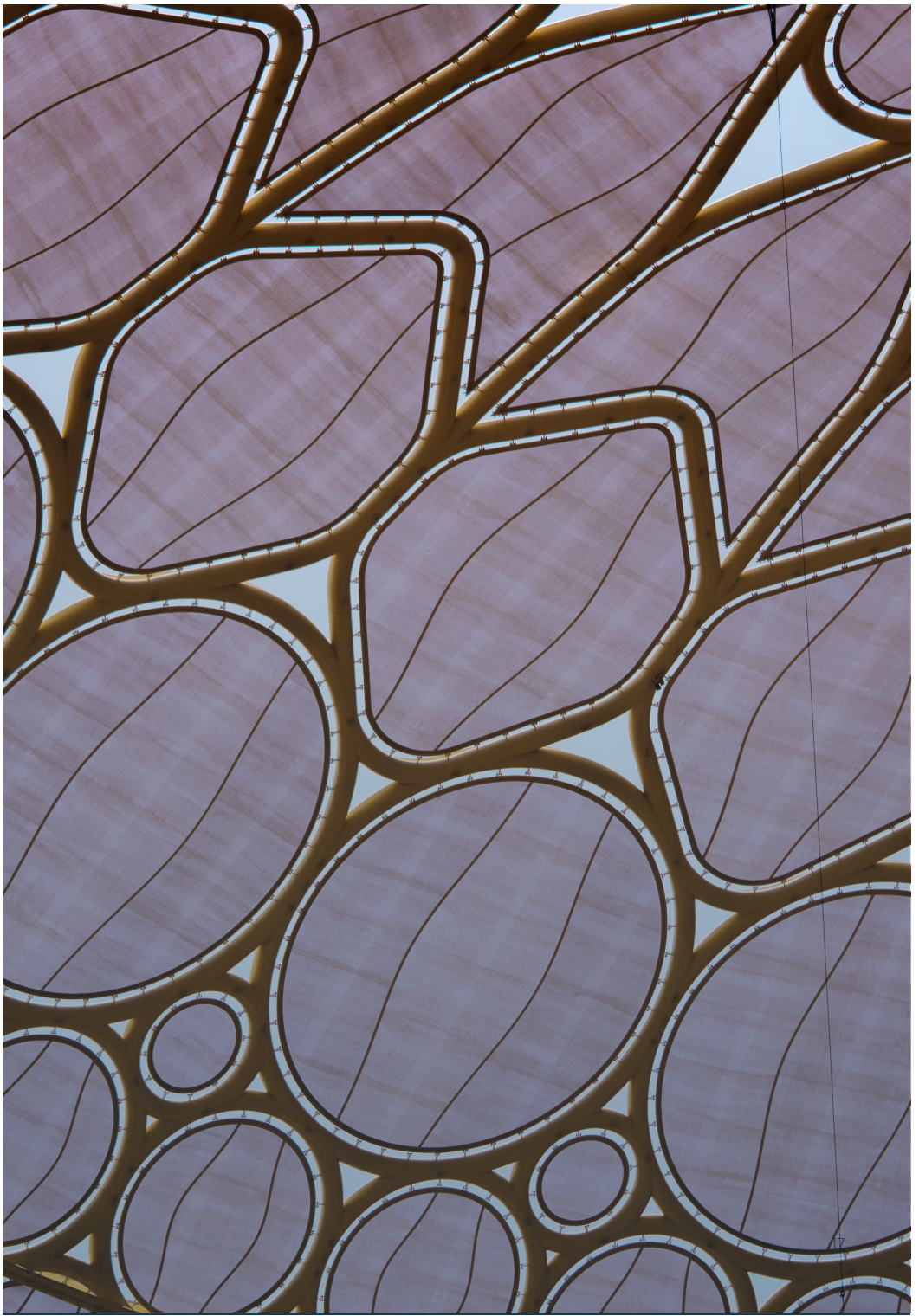
Following the end of the consultation period between the numerous authorities involved, in early March 2022 the SCA notified that any such activities are going to be undertaken in compliance with the recommendations and requirements of the Financial Action Task Force (FATF) and in accordance with

Federal Decree No. 20 of 2018 on Anti-Money Laundering and Countering the Financing of Terrorism and Illegal Organisations and its amendments and implementing regulations.

It was clarified that any person wishing to become a virtual assets services provider in the UAE (except for ADGM and DIFC) must obtain an initial approval from the SCA, in accordance with the SCA Rulebook before obtaining a commercial licence from the competent authority.

Any virtual asset service providers which may already have commercial licences for providing any virtual asset services are required to apply to the SCA to obtain the necessary licence to practice such activity going forward and will also need to demonstrate compliance with all legislation related to anti-money laundering controls in the UAE regarding virtual assets.





## Emirate of Dubai

### Law No. 4 of 2022 – VAL and VARA

On 11 March 2022, Law No. 4 of 2022 on the Regulation of Virtual assets (VAL) became effective in the Emirate of Dubai.

This law provides for the regulation of virtual assets and establishes the Dubai Virtual assets Regulatory Authority (VARA), an entity affiliated to the Dubai World Trade Centre Authority (DWTCA). The aim of VARA is to monitor the legal framework for businesses with a focus on virtual assets, including crypto assets, digital assets and NFTs in the Emirate of Dubai.

VARA is responsible for licensing and regulating the sector across Dubai's mainland and the free zone territories with the exception of the DIFC. Provisions in other legislations of the Emirate of Dubai or the free zones established in Dubai (except for the DIFC) that are contrary or conflicting with the Virtual Assets Law are effectively repealed.

However, we understand that the federal laws, including the CB's and the SCA's legal frameworks will still apply and to the extent that there is an overlap for certain activities connected to relevant virtual assets also need to be considered. There is already a memorandum of understanding in place between the SCA and the DWTCA from 2021 which relates to the offering, regulation, issuance and trading of virtual assets within the DWTCA's free zone.

Whether this will be applied on a broader spectrum to take the DWTCA's larger role into account, or supplemented is not yet clear. The details on how the several regulators will work together and how requirements will be aligned is yet to be seen.

Pursuant to the definition in VAL, a **'virtual asset'** is a 'digital representation of value which can be digitally traded or transferred or used as an exchange or payment tool for investment purposes' and a **'virtual token'** is a 'digital representation of a group of rights which can be issued and traded digitally through a virtual asset platform (a platform operated by a virtual asset provider licensed by VARA)'.

According to VAL, any kind of activities involving virtual assets that fall into operating and managing platforms services, exchange services, transfer services, services related to asset portfolios, or the offering and trading of token can only be performed in Dubai with a licence from VARA.

In order to obtain such a licence, applicants must establish Dubai as the headquarters for their business and are required to acquire a commercial business licence from an appropriate licensing authority in Dubai. This can be in the mainland of Dubai or a free zone.

# Dubai-based free zone regulators: the Dubai Multi Commodities Centre Authority and the Dubai Airport Freezone Authority

**In 2021, a regulatory framework for businesses offering, issuing, listing and trading crypto assets within the Dubai Multi Commodities Centre (DMCCA) was established by the Dubai Multi Commodities Centre Authority, which had previously already offered some crypto asset-related services licences based on the authority's understanding that crypto assets are commodities. The additional 2021 framework was established in co-ordination with the SCA aiming to offer additional licence activities to customers setting up in the DMCC free zone and align the DMCCA's approach with the requirements laid out in the SCA Virtual Asset Regulation Framework.**

With the Cryptocurrency Licence from the DMCCA, an investor can offer customers cryptocurrency-related services (including storage, management, and trading of crypto commodities), as well as Bitcoin solutions, software applications, or advisory services.

However, we understand that DMCC companies are only permitted to use their own funds for trading, and the DMCCA issued licence does not include provisions for establishing exchange houses or conducting ICO's, payment processing, brokerage or other financial services.

Lastly in March 2021 the Dubai Airport Free Zone Authority (DAFZA) also signed an agreement with the SCA to support the regulation, offering, issuance, listing and trading of crypto assets within the free zone. DAFZA companies can obtain a licence for trading with crypto assets, subject to the supervision of and compliance with the legal framework established by the SCA, which will issue the relevant virtual assets activity approvals and licences.

How these two frameworks will be impacted by the new VAL, and how the DMCCA and DAFZA, which are so far co-ordinating with the SCA, will work together with VARA remains to be seen.

# Conclusion

Further changes to the legislative framework will certainly happen along the way as the digital assets market develops. As an example, ADGM's latest consultation (that closed in May 2022) included a

possible permission for regulated Multilateral trading facilities/ custodian groups within the ADGM to conduct non-fungible token activities.



**2000+ people**  
**1100+ lawyers**  
**300+ partners**  
**29 offices**  
**17 jurisdictions**

<b>Austria</b>	Klagenfurt   Vienna
<b>Belgium</b>	Brussels
<b>China</b>	Beijing   Hong Kong   Shanghai
<b>Czech Republic</b>	Brno   Prague
<b>France</b>	Paris
<b>Germany</b>	Berlin   Düsseldorf   Frankfurt   Hamburg   Munich
<b>Hungary</b>	Budapest
<b>Netherlands</b>	Amsterdam   Eindhoven
<b>Poland</b>	Warsaw
<b>Republic of Ireland</b>	Dublin
<b>Slovakia</b>	Bratislava
<b>South Korea</b>	Seoul*
<b>UAE</b>	Dubai
<b>Ukraine</b>	Kyiv
<b>United Kingdom</b>	Cambridge   Liverpool   London   London TechFocus
<b>USA</b>	New York   Silicon Valley

\* In association with DR & AJU LLC

© Taylor Wessing LLP 2022 | 2205-002298-7

Taylor Wessing statistics published are correct as of 1 September 2021.

This publication is not intended to constitute legal advice. Taylor Wessing entities operate under one brand but are legally distinct, either being or affiliated to a member of Taylor Wessing Verein. Taylor Wessing Verein does not itself provide legal or other services. Further information can be found on our regulatory page at:

[taylorwessing.com](https://taylorwessing.com)

**TaylorWessing**