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New Crypto Tokens Regime in the Dubai International Financial Centre

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1. Introduction

In March 2022, the Dubai Financial Services Authority ("**DFSA**") published Consultation Paper No. 143 proposing to allow for the provision of financial services in relation to "Crypto Tokens" in and from the Dubai International Financial Centre ("**DIFC**").

Following the ending of the consultation period, His Highness Sheikh Mohammed Bin Rashid Al Maktoum, the Ruler of Dubai, has enacted legislation and the DFSA Board has made amendments to the DFSA Rulebook each taking effect on 1 November 2022.

The new Crypto Tokens regime augments the DFSA's existing Investment Tokens regime which was introduced on 25 October 2021. We discussed the Investment Tokens regime in a previous Client Alert.[1]

The new DFSA Crypto Tokens regime is detailed. Significant changes have been made to many of the rules and modules that form the DFSA Rulebook. In this Client Alert, we set out a summary of the key changes that have been made.

2. Summary of the DFSA Crypto Tokens Regime

- ***Commencement Date.*** The new rules take effect on 1 November 2022.
- ***Definition of Crypto Tokens.*** The regime largely deals with Crypto Tokens (e.g. cryptocurrencies and stablecoins). The DFSA considers a token to be a Crypto Token if it: (a) is used, or is intended to be used, as a medium of exchange or for payment or investment purposes; or (b) confers a right or interest in another token that meets the requirements in (a). However, certain tokens are not Crypto Tokens in the rules (i.e. "investment tokens", NFTs, "utility tokens" and digital currencies issued by any government, government agency, central bank or other monetary authority).[2]
- ***Only Recognised Crypto Tokens to be used in the DIFC.*** In general, only Crypto Tokens that are "recognised" by the DFSA may be used in connection with a financial service, public offering or financial promotion in the DIFC.[3] These are referred to as "Recognised Crypto Tokens". The DFSA must publish an Initial List of Recognised Tokens within 30 days of 1 November 2022.[4] The DFSA must also publish notices when it recognises other Crypto Tokens after an application for recognition has been made by a current or applicant authorised person or an issuer or developer of the Crypto Token.[5]
- ***Use of Privacy Tokens/Devices and Algorithmic Tokens is prohibited.*** Certain Crypto Tokens are prohibited from being used in connection with a financial service, public offering or financial promotion in the DIFC. Prohibited tokens are Privacy Tokens (e.g. tokens with features to hide, anonymise, obscure or prevent the tracing of transactions and individuals)[6] and Algorithmic Tokens (e.g. tokens using algorithms to increase or decrease their supply to stabilise or reduce volatility in their price).[7]
- ***Mixing regulated and unregulated business related to Utility Tokens or NFTs is generally prohibited.*** A DFSA authorised firm may not carry on both a DFSA regulated crypto business and business relating to NFTs and Utility Tokens (unless providing custody).[8] The prohibition is intended to avoid any misconception by users of a service that regulatory requirements for financial services apply to the unregulated part of the business. However, the prohibition does not extend to the use of digital currencies issued by governments, government agencies, central banks or other monetary authorities. Therefore, an authorised person may provide a service or carry on an activity involving such a digital currency.
- ***Money Services Providers restricted to Fiat Crypto Tokens.*** DFSA authorised money services providers may only use DFSA recognised Fiat Crypto Tokens (e.g. fiat stablecoins recognised by the DFSA) in connection with their money services business.[9]
- ***Crowdfunding Operators.*** DFSA authorised crowdfunding operators may not facilitate investment in Crypto Tokens through

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their platforms.[10]

- ***Representative Offices.*** DFSA authorised representative offices may not market Crypto Tokens or financial services related to Crypto Tokens.[11]
- ***Authorised Firm applicants must generally be DIFC companies and not branches.*** In general, an applicant for a DFSA licence to carry out a financial service relating to Crypto Tokens must be a body corporate incorporated under the DIFC Companies Law, except in very limited circumstances.[12]
- ***Notification of significant events affecting Crypto Tokens.*** The DFSA is keen on being informed of any significant events or developments affecting Crypto Tokens. Each DFSA authorised person carrying on a financial service relating to a Crypto Token must notify the DFSA immediately if it becomes aware of any significant event or development that reasonably suggests that the Crypto Token no longer meets the criteria for it to be a Recognised Crypto Token unless it reasonably believes that the information is already generally available to the public.[13]
- ***Provision of information on Crypto Tokens to clients.*** The new rules regulate the provision of information on Crypto Tokens to clients. For example, a DFSA authorised firm must not provide a financial service related to a Crypto Token to a person unless it has given the person a "key features document" containing detailed information about the Crypto Token.[14] Prominent risk warnings must also be included on websites, marketing or educational materials and other communications relating to Crypto Tokens.[15]
- ***Retail Clients.*** Significant protections have been introduced for retail clients (i.e. those persons that are not "professional clients" or "market counterparties") in addition to the overarching duty to act in the best interest of a retail client. For example:
    - A DFSA authorised firm must not carry on a financial service of "arranging deals in investments", "dealing in investments as agent", "dealing in investments as principal" or "operating a MTF" with or for a retail client, unless the authorised firm has carried out an appropriateness assessment of the person and formed a reasonable view that the person has: (a) adequate skills and expertise to understand the risks involved in trading in Crypto Tokens or Crypto Token derivatives (as the case may be); and (b) the ability to absorb potentially significant losses resulting from trading in Crypto Tokens or Crypto Token derivatives (as the case may be).[16] Similar appropriateness assessments and care are required by DFSA authorised firms recommending to a client a financial product or financial service, or executing a transaction on a discretionary basis for a client.[17]
    - A DFSA authorised firm must: (a) not provide a "credit facility" to a retail client in connection with trading in Crypto Tokens; and (b) take reasonable steps to ensure that a retail client does not use a credit card or third-party credit facility to buy a Crypto Token.[18]
    - A DFSA authorised firm must not offer or provide to a retail client any incentive that influences, or is reasonably likely to influence, the retail client to trade in a Crypto Token or Crypto Token derivative.[19] The DFSA states that incentives include bonus offers, gifts, rebates of fees (including volume-based rebates), trading credits or any form of reward in relation to the opening of a new account or trading in a new type of Crypto Token or Crypto Token derivative offered to an existing or potential new retail client.
    - A DFSA authorised firm must not offer or provide any facility or service that allows a retail client to lend a Crypto Token to the authorised firm or to another person.[20]
- ***Funds investing in Crypto Tokens.*** The DFSA has made a number of changes affecting funds investing in Crypto Tokens and the management, marketing and other financial services in respect of them in and from the DIFC. For example, a DIFC established fund may only invest in Recognised Crypto Tokens and must be managed by a DFSA authorised fund manager and a DFSA authorised fund manager must not manage a non-DIFC established fund that invests in Crypto Tokens.[21]
- ***Anti-money laundering and registration of issuers and service providers of NFTs and Utility Tokens as DNFBPs.*** The DFSA has updated its anti-money laundering rules to take into account Crypto Tokens. These rules apply to DFSA authorised persons and those registered with the DFSA as Designated Non-Financial Business or Profession (DNFBP). Certain issuers and service providers of NFTs and Utility Tokens are required to be registered with the DFSA as a DNFBP and will be subject to the DFSA's anti-money laundering rules.[22]
- ***Six-month transitional period.*** The DFSA has put in place transitional rules applying to each person who immediately before 1 November 2022: (a) was a DFSA authorised person; and (b) carried on a relevant activity or service relating to a Crypto Token. Such persons may continue to carry on certain activities or services relating to Crypto Tokens for a transitional six-month period after 1 November 2022 without being required to obtain the necessary amendment to its authorisation or to comply with various detailed requirements relating to Crypto Tokens.[23] After the six-month period, such persons should comply with the new rules or cease doing Crypto Token related business. The DFSA, however, makes clear that the transitional

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relief does not relieve a DFSA authorised person from complying with certain key obligations during the transitional period in respect of the activities or services it carries on under the transitional arrangements (e.g. DFSA's principles for authorised firms, anti-money laundering requirements, financial promotion requirements, market abuse provisions, provisions prohibiting misconduct (e.g. misleading, deceptive, fraudulent or dishonest conduct) and the prohibition relating to the use of Privacy Tokens).[24]

3. Concluding Remarks

The new DFSA Crypto Token regime is a momentous step forward augmenting the DFSA's existing Investment Tokens regime introduced in 2021. With the new regime in place, the DFSA has completed its ambitious project to create a thoughtful framework covering the panoply of "crypto" assets.

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[1] Gibson Dunn Client Alert dated 15 November 2021 entitled *Dubai Financial Services Authority Moves into the "Crypto" Space and Establishes Regulatory Framework for "Investment Tokens"* (https://www.gibsondunn.com/dubai-financial-services-authority-moves-into-crypto-space-and-establishes-regulatory-framework-for-investment-tokens/).

[2] Rule A2.5.1 of the DFSA Rulebook (General Module).

[3] Rule 3A.2.1 of the DFSA Rulebook (General Module).

[4] Rule 3A.4.1(2) of the DFSA Rulebook (General Module).

[5] Rule 3A.3.7 of the DFSA Rulebook (General Module).

[6] Rule 3A.2.2 of the DFSA Rulebook (General Module).

[7] Rule 3A.2.3 of the DFSA Rulebook (General Module).

[8] Rule 3A.2.4 of the DFSA Rulebook (General Module).

[9] Rule 3A.2.5 of the DFSA Rulebook (General Module).

[10] Rule 2.2.10F of the DFSA Rulebook (General Module).

[11] Rule 2.26.1(4) of the DFSA Rulebook (General Module).

[12] Rule 7.2.2(7) of the DFSA Rulebook (General Module).

[13] Rule 11.10.21 of the DFSA Rulebook (General Module).

[14] Rule 15.5.1 of the DFSA Rulebook (Conduct of Business Module).

[15] Rule 15.5.3(2) of the DFSA Rulebook (Conduct of Business Module).

[16] Rule 15.6.2 of the DFSA Rulebook (Conduct of Business Module).

[17] Rule 3.4.2 of the DFSA Rulebook (Conduct of Business Module).

[18] Rule 15.6.3 of the DFSA Rulebook (Conduct of Business Module).

[19] Rule 15.6.4 of the DFSA Rulebook (Conduct of Business Module).

[20] Rule 15.6.5 of the DFSA Rulebook (Conduct of Business Module).

[21] DFSA Rulebook (Collective Investment Rules).

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[22] DFSA Rulebook (Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module).

[23] Rule 10.5.1 of the DFSA Rulebook (General Module).

[24] Guidance to Rule 10.5.1 of the DFSA Rulebook (General Module).

The following Gibson Dunn lawyer prepared this client update: Hardeep Plahe.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. If you wish to discuss any of the matters set out above, please contact any member of Gibson Dunn's Crypto Taskforce (cryptotaskforce@gibsondunn.com) or the Global Financial Regulatory team, including the following:

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