Central Bank of The UAE - Stored Value Facilities (SVF) Regulation

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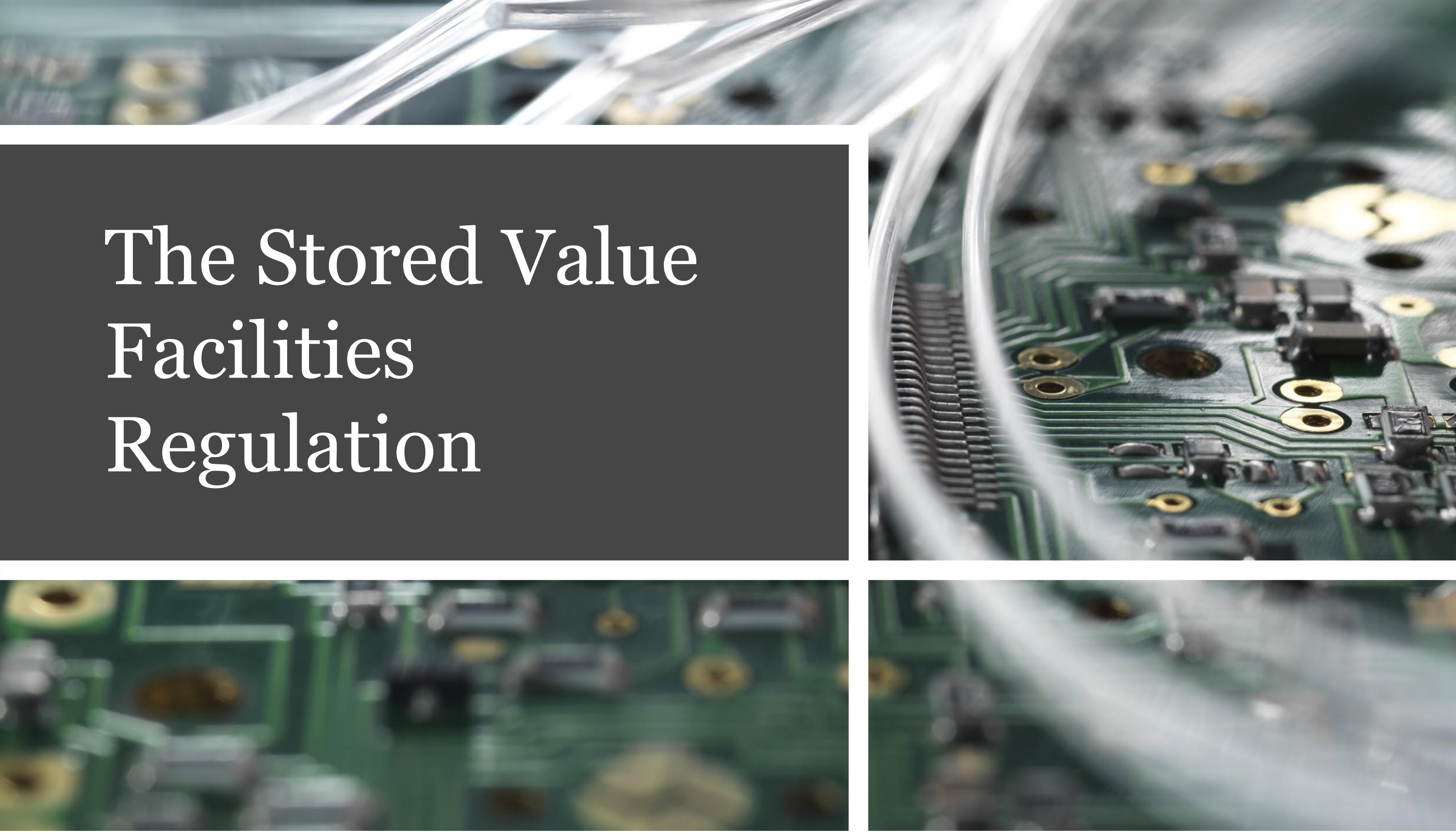

The Stored Value Facilities Regulation

Introduction

On 30th September 2020, the UAE Central Bank (**UAECB**) issued its new regulation (the **Regulation**) on Stored Value Facilities (**SVF**) to support the development of digital payment services in the UAE. Through this new regulation, the UAECB aims to facilitate access to the UAE market for SVF providers, FinTech firms and Payment Service Providers (**PSPs**), whilst continuing to safeguard customer interests, ensuring proper business conduct practice and supporting the development of payment products and services in the UAE. While banks are exempt from the Regulation, they are still required to notify the UAECB in writing if they plan to issue an SVF and carry out any SVF business functions.

Scope of the Regulation

The Regulation applies to all companies licensed under the now repealed Regulatory Framework for Stored Value and Electronic Payment Systems, and those looking to conduct SVF activities under the new Regulation. Applicants for an SVF license must be incorporated within mainland UAE or a free zone, but not financial free zones. The Regulation excludes from its application financial institutions regulated by financial free zone authorities (DIFC & ADGM) who may conduct SVF business in the mainland UAE only after obtaining an SVF license from the CBUAE.

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Key Takeaways

Stored Value Facilities

The Regulation provides that an SVF is a facility whereby a customer can pay a sum of money to the SVF issuer in exchange for the storage of that money on the facility. This prepaid sum of money can be provided via debit card, credit card, bank account transfer, reward points, crypto assets or virtual assets to the issuer in exchange for the SVF. The SVF may in turn consist of crypto assets, virtual assets, reward points, top-up, online transfer or other values.

The Regulation introduces a variety of Stored Value Facility (**SVF**) activities including:

- *Device-based SVF* - a facility that uses devices to store values in an electronic chip on a card or a physical device e.g. prepaid cards, watches or ornaments;
- *Non-device-based SVF* - a facility that uses a network-based account to store value and is accessible via the internet, computer network or mobile network e.g. mobile e-wallets or internet based payment platforms; and
- *Single-purpose SVF* - a facility that grants the individual value for certain non-monetary goods or services e.g. a closed-loop facility.

Crypto Assets and Virtual Assets

The Regulation provides that both crypto assets and virtual assets may be used as a stored value when purchasing other goods and services. They are defined as follows:

- Crypto Assets means cryptographically secured digital representations of value or contractual rights that use a form of distributed ledger technology that can be transferred, stored or traded electronically.
- Virtual Assets includes digital tokens (such as digital currencies, utility tokens or asset-backed tokens) and any other virtual commodities, crypto assets and other assets of essentially the same nature.

As such, Cyrpto or Virtual Assets may be accepted in exchange for the storage of the value of that Crypto or Virtual Assets on an SVF.

On 6 December 2020, the UAECB clarified that the Regulation does not recognise Crypto and Virtual assets in the UAE as a legal tender, re-confirming the position that the only legal tender in the UAE is the UAE dirham. The UAECB is also preparing to issue a new retail payment system regulation that will also introduce “payment tokens”, which are defined as crypto assets that are backed by a fiat currency and used for payment purposes. Additionally, Cyrpto and Virtual Assets may be used as assets for investment, and therefore subject to the Securities and Commodities Authority rules and regulations.

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Exclusions

The Regulation does **not** apply to a number of SVFs including:

- SVFs used for certain cash reward schemes;
- SVFs used for purchasing certain digital products;
- SVFs used for certain bonus point schemes;
- SVFs that can only be used within a limited group of products or services providers; and
- Those within which (subject to being accepted by the UAECB) the aggregate amount of the float of the facilities does not exceed AED 500,000 and the aggregate number of customers is not more than 100.

SVF Promotion in the UAE

It is prohibited for an overseas SVF provider to advertise its services in the UAE. The UAECB has specifically laid out the factors it will use to determine whether an SVF is issued in the UAE, including the location of the delivery, location of customer services, location of top-up channels and whether promotional material is targeted via “push” techniques i.e. targeted at groups the issuer would reasonably know are based in the UAE.

Licensing application

The Regulation has scrapped, among other things, the previous 60% ownership requirements of a bank, which means that companies may have a wider option of partners and are able to retain a greater shareholding. To obtain an SVF license, the applicant must, among other things, also have an effective risk management, technology risk and internal controls framework which is approved by the board of directors, including:

- Corporate governance and risk management;
- Float management;
- Technology risk management;
- Payment security management;
- Business continuity management;
- Business conduct and Customer protection; and
- AML/CFT control systems.

Transition period

Financial institutions currently operating under the previous SVF framework are required to complete the implementation of the relevant measures set out in the Regulation by the end of the one-year transition period. Financial institutions should submit an assessment report issued by an independent party at the end of the transition period comprising of the key areas of its SVF operations, and provide evidence of its compliance with the Regulation.

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Financial resource requirements

To assess the financial soundness of an applicant, the UAECB has introduced financial resource requirements, including the following:

- Paid-up capital of at least AED 15 million or an equivalent amount in any other currency approved by the UAECB;
- Aggregate capital funds of at least 5% of the total float received from the customers.

A **paid up capital** of at least *15 million Dirhams* (15,000,000 AED)* or an equivalent amount in any other currency approved by the Central Bank

Aggregate Capital Funds of at least *5% of the total Float* received from the Customers

**An unconditional, irrevocable bank guarantee for the full paid up capital amount in favour of the Central Bank paid upon first demand shall also be submitted to the Central Bank with the application of the License. Such a guarantee should be renewable before expiry or based on the Central Bank's demand.*

Aggregate capital funds are calculated by taking the total of the paid-up capital, reserves, and retained earnings, minus the losses of the company. The aggregate capital funds must be at least 5% of the float.

(Paid-up Capital + Reserves + Retained Earnings) – Accumulated Losses (inc. goodwill)

= AGGREGATED CAPITAL FUNDS

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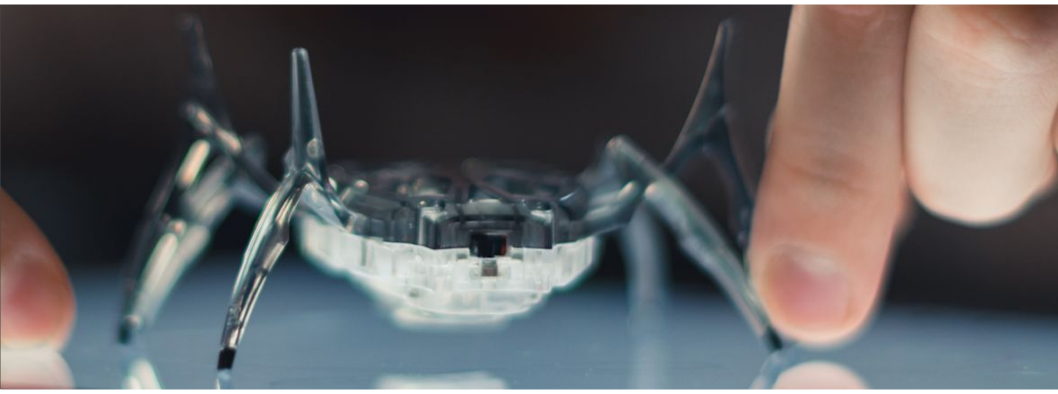
The Float

The UAECB describes the float as "*the Customers' funds/money/Money's Worth paid to the Licensee in exchange for the value of the money/Money's Worth (including Money's Worth such as values, points, Crypto-Assets or Virtual Assets) on the facility*".

Companies are required to protect the float from insolvency and ensure that customers are able to redeem their values stored on the facility at all times.



Technology Risk Management and Governance

The Regulation provides comprehensive guidelines to establish an effective technology risk management framework, in order to ensure the reliability, robustness, stability and availability of technology operations, payment systems, safety and efficiency of the SVF scheme. The Regulation places an emphasis on strong governance that covers various aspects of IT function including:

- IT control policies and procedures
- Identification, Estimation and Management of Technology Risk
- Implementation of full project lifecycle methodology
- Quality assurance of major technology projects
- Risk based source code review
- Segregation of duties among IT teams
- The change management process to ensure the integrity and reliability of production environment and changes to the application systems
- Baseline security requirements including configurations, system software, database, servers and network devices

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Customer accounts

The Regulation provides that a reasonable limit should be set by the facility provider on the value that can be stored within each type of customer account held under an SVF scheme. When opening customer accounts, SVF providers are permitted to use online channels similar to that of a banks electronic Know Your Customer (KYC) process.

Cyber resilience

SVFs are heavily reliant on Internet and mobile technologies to deliver their services. Therefore, in order to mitigate cyber security risks, the licensee should arrange adequate resources to ensure its capabilities to identify the risk, protect its critical services against an attack and contain the impact of cyber security incidents.

Information and data management

The Regulation emphasises how important it is to establish a strong program and allocate adequate resources for the management and security of information and data including its ownership, classification, storage, processing, transmission and disposal.

Data is required to be stored and maintained in the UAE and should only be made available to the corresponding Customer, the UAECB and other regulatory authorities with prior approval of the UAECB, or by a UAE court order.

Lets Talk
Our FinTech, Blockchain and Technology legal team consists of highly experienced and ‘tech-savvy’ lawyers, delivering the expertise our clients demand in a dynamic and complex market.

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