

Virtual Currencies - Real-World Regulation

Andrew Fawcett - Senior Counsel - Digital and Data
a.fawcett@tamimi.com - Abu Dhabi

Ashish Banga - Senior Associate - Banking and Finance
a.banga@tamimi.com - Abu Dhabi



Virtual currencies such as “points” or “bucks” have become a commonplace offering in online gaming. However, while the currency is virtual, its use potentially poses some very real legal issues for app or game developers.

As far back as 2013, a report for the United Nations Office on Drugs and Crime indicated that online game currencies were being used by cyber criminals as a venue to commit money laundering.

In the UAE the following recent financial regulations address virtual currencies:

- the Securities and Commodities Authority (SCA) issued “The Authority’s Chairman of the Board of Directors Decision No. (23/ Chairman) of 2020 Concerning Crypto Assets Activities Regulation” (Crypto Assets Decision) on 1 November 2020; and
- the UAE Central Bank issued the Stored Value Facilities Regulation on 30 September 2020 (“SVF Regulations”).

App or game developers that offer users the ability to purchase in-game currencies and digital goods may inadvertently find that they are subject to these laws.

The Crypto Asset Decision

The expansive Crypto Asset Decision explains the SCA regulations applicable to transactions involving “Crypto Assets” in the UAE, such as buying, selling and listing them on a Crypto Asset Exchange in the country. It regulates those wanting to offer crypto assets including crowdfunding platforms, marketplaces and other related financial services.

The Crypto Asset Decision broadly defines a Crypto Asset 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.”

The Crypto Asset Decision makes a distinction between a “Security Token” and a “Commodity Token”. The former being a security to the extent it can be 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 the Decision. A Commodity Token is any Crypto Asset that is not a Security Token.

The offering, issuing and promoting of Security Tokens in the UAE is subject to the SCA’s

regulations and decisions applicable to the relevant securities, and is otherwise heavily regulated under the Crypto Asset Decision.

Specific Use Credits

The Crypto Asset Decision expressly refers to online gaming in the definition of “Specific Use Credits”. These are defined as Commodity Tokens issued or offered in the following cases:

- Exclusively to users of an online game, information technology platform or application by the developer or its related parties, and which may not be redeemed or transferred, or may be redeemed only by such user to consume or enhance functionality or access additional services or rights in a specific game or application, or group of games or applications (but not redeemed for fiat currency, tangible property, or other Crypto Assets); or
- By an employer to an employee, which may be redeemed at, or in relation to, consumer goods or services (not including fiat currency or other Crypto Assets) offered by or on behalf of the employer at the employee’s place of work only; or
- By a company to customers which may be redeemed exclusively for consumer goods and services at that company or its related parties (but not redeemed for fiat currency or other Crypto Assets).

Whilst, the definition is extensive, the term is actually only used once in the Crypto asset Decision.

Discloser Requirements for Commodity Tokens

Under the first clause of Article 11 of the Crypto Assets Decision all Commodity Tokens offered or issued in the UAE must include certain information and disclaimers including that:

- Crypto Assets are not considered securities under applicable UAE laws, or given any protections under these laws.
- They are not legal tender in the UAE, nor are they backed by the government.

- They cannot be listed on any Crypto Asset Exchange in the UAE without prior approval from the SCA, which if not provided also prohibits their trade and restricts their resale in the UAE.
- Their transactions are irreversible and non-recoverable notwithstanding the fact that they could be accidental or fraudulent.
- Their nature may lead to an increase in cybercrimes.

However, it appears that the need to provide this information and these disclaimers expressly do not apply to Specific Use Credits (see the second clause of Article 11 of the Crypto Asset Decision)

What is less clear is whether any general obligations under Article 6 of the Crypto Asset Decision still apply to Specific Use Credits. Under that provision, all offer documentation in respect of Crypto Assets offered or promoted in the UAE in respect of an offer of Crypto Assets must :

- Be clear, fair, accurate and not misleading.
- Not contain any incorrect statement of an essential truth or omit a statement of an essential truth that is necessary to make the data contained in this documentation not misleading in light of the circumstances in which it is submitted.

An “offering” is very broadly defined as any communication aims at requesting, causing, organizing or sponsoring the subscription for the issuance or offering of Crypto Assets, or subscription for the future issuance or offering of Crypto Assets.

Stored Value Regulations

The UAE Central Bank issued the SVF Regulations in September 2020. They have a one-year transition period that is coming to an end.

The term ‘stored value facilities’ (SVF) refers to any non-cash facility through which a customer pre-pays money (or ‘money’s worth’) so that they may subsequently use that payment method to pay for goods or services.

Under the SVF Regulations, it is prohibited to carry on the activity of issuing or operating SVF without a prior license from the UAE Central Bank except if the SVF is a “Single-purpose Value Facility”.

A Closed Loop Payment Scheme is cited in the SVF Regulation as a typical Single-purpose Stored Value Facility.

A “Closed Loop Payment Scheme” is defined as a payment scheme, which is limited in terms of where it can be used to purchase goods and services from an issuing

retailer or entity.

Arguably where a gaming company offers the use of in-game currencies to users but restricts the use of the in-game currencies to the one game or sets of games this would be a Closed Loop Payment Scheme, and therefore exempt from licensing by the UAE Central Bank under the SVF Regulations.

It is possible to apply to the UAE Central Bank for an exemption of certain SVF from the licensing requirements. This includes SVF used for purchasing certain digital products. Examples given in the SVF Regulations include the purchase of digital content and applications.

Whether an exemption will be granted by the UAE Central Bank will be based on the risk the SVF poses to its (potential) customers, customer funds and the financial system.

Conclusion

Before offering in-game currencies, app or game developers in the UAE should, at a minimum, determine how (and if) by offering that product it needs to comply with the Crypto Assets Decision or the SVF Regulations.

For more information on how we can help, please contact either our specialist Banking or Digital & Data teams