

FINTECH

United Arab Emirates



Fintech

Consulting editors

Angus McLean, Penny Miller

Simmons & Simmons

Quick reference guide enabling side-by-side comparison of local insights into fintech innovation and government / regulatory support; regulatory bodies and regulated activities; cross-border regulation; regulation of sales and marketing and of changes of control; financial crime; peer-to-peer and marketplace lending; artificial intelligence, distributed ledger technology and crypto-assets; data protection and cybersecurity; outsourcing and cloud computing; intellectual property, competition, tax and corporate immigration considerations; and recent trends.

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Contributors

United Arab Emirates



Muneer Khan
muneer.khan@simmons-simmons.com
Simmons & Simmons



Raza Rizvi
raza.rizvi@simmons-simmons.com
Simmons & Simmons



Jack Rossiter
jack.rossiter@simmons-simmons.com
Simmons & Simmons



FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

What is the general state of fintech innovation in your jurisdiction?

There is a generally progressive and ambitious trend around fintech innovation in the UAE, with some fintech subsectors generating more notable and scaled innovation than others. Government and public sector entities and regulators play a key role in the innovation strategies across most industry verticals and this is also the case for fintech. From a financial services regulatory perspective, the UAE comprises three separate and independent jurisdictions:

- the Dubai International Financial Centre (DIFC);
- the Abu Dhabi Global Market (ADGM); and
- the remainder of the UAE (often referred to as 'onshore' or 'onshore UAE').

Federal-level financial services regulators have jurisdiction over onshore UAE; however, the DIFC and the ADGM each has its own regulatory bodies, and all the various regulators across all three jurisdictions have identified fintech innovation (albeit with some differing flavours) as a key priority.

In the DIFC, the DIFC FinTech Hive runs a now well-established accelerator programme that has focussed on fintech, insurtech, regtech and Islamic fintech start-ups. In tandem, the DIFC's financial services regulator, the Dubai Financial Services Authority (DFSA) launched its Innovation Testing Licence (ITL), a regulatory sandbox in 2017. These initiatives are in line with the goals of the Dubai Plan 2021 strategy to develop Dubai's economy. The DFSA has also signed a number of bilateral fintech agreements with other regulators globally, such as with the Monetary Authority of Singapore in August 2018 and Japan's Financial Services Agency in September 2018, to cooperate in the development of fintech and to foster innovation in their respective jurisdictions. Other similar agreements that the DFSA has entered into include with the Australian Securities and Investment Commission, the Hong Kong Monetary Authority, the Hong Kong Securities and Futures Commission, the Hong Kong Insurance Authority and the Securities Commission Malaysia.

Similarly, the ADGM's financial services regulator, the Financial Services Regulatory Authority (FSRA) launched its regulatory sandbox, the Regulatory Laboratory (RegLab) following the implementation of its fintech legislative framework. The ADGM has also partnered with the Association of Southeast Asian Nations Financial Innovation Network, which launched a digital marketplace – the Application Programming Interface Exchange (APIX) – for South-East Asia to support financial inclusion, to test the cross-border connectivity between the ADGM Digital Sandbox and APIX.

Both the DFSA and the FSRA joined the Global Financial Innovation Network (GFIN), to, among other objectives, assist with cross-border testing.

Beyond the DIFC and ADGM financial free zones, there are a number of other initiatives to foster innovation in the UAE that cross over into the UAE fintech sector. The UAE Blockchain Strategy 2021 aims to have 50 per cent of all government transactions on the blockchain network by 2021. In October 2016, the UAE cabinet launched Government Accelerators as a new mechanism to boost the achievement of the National Agenda to achieve Vision 2021. Additionally, the Smart Dubai initiative is the Emirate of Dubai government office charged with facilitating Dubai's citywide smart transformation, to empower, deliver and promote an efficient, seamless, safe and impactful city experience for residents and visitors. Among its key initiatives are the development of Dubai's first Artificial Intelligence Smart lab and the Dubai Blockchain Strategy, which is a collaboration between the Smart Dubai Office and the Dubai Future Foundation to continually explore and evaluate the latest technology innovations. The UAE created the first Minister of AI with a mandate that will cross over into fintech innovation. In August 2018, it was announced that the

DIFC courts has partnered with Smart Dubai to create the world's first Court of Blockchain.

Law stated - 11 June 2021

Government and regulatory support

Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

The UAE's financial services free zones (namely, the ADGM and the DIFC) each has its own regulators that have launched initiatives to enable fintech businesses to participate and test their solutions in environments with lighter-touch regulation.

In the ADGM, the FSRA has created a RegLab. Participants in the RegLab are not subjected to the full suite of authorisation regulation and rules from the outset; rather, a customised set of rules will be applied, which will depend on the business model, technology deployed and risk profile of the fintech participant.

Under the RegLab framework, fintech participants are given two years to develop, test and launch their products and services in a controlled environment, after which fintech participants with viable business models will be transferred to the full authorisation and supervisory regime (provided they meet the authorisation criteria). Firms that are not ready after the two-year period will exit the RegLab framework.

In the DIFC, the DFSA has created the ITL, which fintech companies can apply for to test an innovative product or service for six to 12 months. In exceptional cases, the DFSA will consider extending that period. If an ITL licensee has met the outcomes detailed in its regulatory test plan, and it can meet the full DFSA authorisation requirements, it will migrate to full authorisation. If it does not, the company will have to cease carrying on activities in the DIFC that need regulation. The DIFC also launched a fintech fund of US\$100 million fund with a stated objective to help promising start-ups raise growth capital, while also supporting their outreach and connections within the wider financial services industry.

To further the ambition of innovation of Dubai and the UAE in the financial world, the DFSA and the FSRA are committed to cross-border testing under the direction of the GFIN. The purpose of such a pilot scheme is to assist in providing efficient ways for fintech firms to engage with regulators across multiple jurisdictions.

Law stated - 11 June 2021

FINANCIAL REGULATION

Regulatory bodies

Which bodies regulate the provision of fintech products and services?

For banking and lending-related activities in onshore UAE, the financial services regulator is the UAE Central Bank, while for securities and capital markets-related matters, the UAE Securities and Commodities Authority (SCA) is the relevant regulator. Following the merger between the UAE Central Bank and the UAE Insurance Authority under Decretal Federal Law No. 25 of 2020, the UAE Central Bank is now also the Onshore UAE insurance sector regulator. For all regulated financial activities in the Dubai International Financial Centre (DIFC), the regulator is the Dubai Financial Services Authority (DFSA). For all regulated financial activities in the Abu Dhabi Global Market (ADGM), the regulator is the Financial Services Regulatory Authority (FSRA).

Law stated - 11 June 2021

Regulated activities

Which activities trigger a licensing requirement in your jurisdiction?

The onshore UAE regulatory regime is separate and different from the regulatory regime found in the DIFC and the ADGM. So, when considering the UAE, it is important to first ask which specific jurisdiction and financial regulatory regime is applicable.

As financial free zones, both the DIFC and the ADGM have their own common law-based commercial and civil legal and financial services regulatory frameworks, as well as their own dedicated courts. The DFSA is the financial services regulator for activities conducted in or from the DIFC and the FSRA regulates financial services activities in or from the ADGM. The relevant federal onshore UAE (ie, in the UAE but outside the DIFC and ADGM) financial regulators are the SCA and the UAE Central Bank. The UAE Central Bank is the prudential regulator for onshore UAE and mainly regulates activities relating to banking and lending activities such as:

- deposit taking (including sweep deposit accounts);
- foreign exchange trading;
- guarantees and commitments;
- payment services (including the issuance of payment instruments and other means of payments);
- primary lending;
- factoring;
- invoice discounting;
- arranging primary loans;
- secondary market loan trading; and
- secondary market loan intermediation.

Outside the banking and lending context, the UAE Central Bank was historically the sole financial services regulator for onshore UAE prior to the establishment of the SCA (in 2001) and the UAE Insurance Authority (IA) (in 2007). However, the IA has now been absorbed by the UAE Central Bank following a merger between the two institutions in 2020. There are therefore some other areas of financial activity that the UAE Central Bank continues to regulate – such as, among other things, currency brokerage, money exchange and some activities that would be typically associated with investment banking.

Generally, the types of regulated activities in onshore UAE, the DIFC and the ADGM include, among other things:

- the marketing and sale of securities;
- providing investment advice;
- dealing in products and investments (either as principal or agent);
- underwriting and placing financial products;
- offering and providing discretionary investment management services;
- marketing or selling funds (including the provision of investment advice);
- accepting deposits;
- providing credit;
- providing money services;
- arranging deals in investments;
- managing assets;
- managing a collective investment fund;
- advising on financial products; and

- insurance intermediation.

Securities and financial products that are regulated by the respective financial services regulators across onshore UAE, the DIFC and the ADGM include, but are not limited to, equity securities, debt securities, linked products, derivatives, structured products, deposits, notes and warrants.

Law stated - 11 June 2021

Consumer lending

Is consumer lending regulated in your jurisdiction?

Yes. Article 65 of UAE Decretal Federal Law No. 14 of 2018 Regarding the Central Bank and Organisation of Financial Institutions and Activities provides that the UAE Central Bank will regulate, among other things, the activities of 'providing credit facilities of all types', 'providing stored values services, electronic retail payments and digital money services' and 'providing virtual banking services'.

With regard to the provision and booking of these services 'in or from' either the DIFC or the ADGM, these activities are likely to be considered as 'providing credit', which will require a licence from either the DFSA or FSRA respectively. To the extent that these services are only 'advised' on or 'arranged' from the same jurisdictions, an appropriate licence would also be required from either the DFSA or FSRA. If these services are merely promoted (with no 'advising' or 'arranging') 'in or from' either financial free zone, unless an exemption applies, a Representative Office licence would be required from either the DFSA or the FSRA respectively.

In November 2020, the UAE Central Bank issued the Consumer Protection Regulations 2020 to ensure the protection of consumers' interests in their use of any financial product, service or relationship with licensed financial institutions. This ensures that ensure that the licensed financial institutions' approach to consumer protection is in line with international standards. Along with the objective of promoting a culture within licensed financial institutions of respecting and acting in the best interest of consumers, it specifically aims to protect consumers by defining the institutional obligations for the protection of consumers.

Law stated - 11 June 2021

Secondary market loan trading

Are there restrictions on trading loans in the secondary market in your jurisdiction?

Secondary market loan trading is an activity regulated by the UAE Central Bank. It constitutes primary lending and is regulated whether or not the loan has been fully drawn. The trading of loans would also constitute a regulated financial services activity in the DIFC and the ADGM.

Law stated - 11 June 2021

Collective investment schemes

Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

In onshore UAE, there is a general prohibition on marketing unregistered collective investment schemes (ie, funds) unless they have been registered with the SCA accordingly (either for private or public promotion). However, the

onshore UAE marketing prohibition does not apply to the promotion of foreign funds to a non-natural 'qualified investor'. A non-natural qualified investor is defined in the SCA rules and includes the federal government, among others.

There is a private placement regime under the SCA rules, where if the potential investor is a natural person, foreign funds can be registered for private placement by an SCA-licensed promoter subject to several conditions.

With regard to the DIFC, there is a prohibition on marketing unregistered funds in the DIFC except through a DFSA-licensed intermediary with the appropriate type of licence, unless an exemption applies. The prohibition on the offer or sale of a fund only applies where this activity is carried out 'in or from' the DIFC. It is not possible to register a foreign fund for distribution in the DIFC. Funds need only be registered with the DFSA if they are domiciled in the DIFC. There are currently relatively few funds domiciled in the DIFC and so most funds marketed in the DIFC are foreign (ie, non-DIFC-domiciled) and, therefore, unregistered. However, all funds and collective investment schemes promoted 'in or from' the DIFC need to meet a fund eligibility criteria.

Once a marketing entity holds the appropriate licence it may market foreign domiciled funds or DIFC-domiciled funds, provided it markets only to investors within the scope of its licence, and in the case of any foreign fund:

- the fund qualifies as a 'designated' or 'non-designated fund';
- the marketing entity has a reasonable basis for recommending a fund as suitable to a particular client; or
- the fund offered discreetly to persons who are professional clients and the minimum subscription per investor is US\$50,000.

Similar provisions exist with regard to the ADGM.

Following public consultation, with effect from 31 August 2017, the DFSA updated its rules to include 'operating a crowdfunding platform' as a regulated activity.

With regard to onshore UAE, while the UAE Central Bank is reported to be in the process of drafting regulations relevant to crowdfunding, no specific regulatory regime has been introduced. However, depending on the specific activities undertaken (ie, where the platform merely introduces two independently contracting parties or if the platform is actively establishing a fund or offering securities), the activity may potentially fall under existing UAE Central Bank or SCA regulation.

Law stated - 11 June 2021

Alternative investment funds

Are managers of alternative investment funds regulated?

Yes, managers of alternative investment funds are regulated in onshore UAE, the DIFC and the ADGM.

Law stated - 11 June 2021

Peer-to-peer and marketplace lending

Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Lending is a regulated activity whereby intermediary platforms are required to obtain approvals to operate from the UAE Central Bank, which would trigger compliance requirements on the platform including the proper vetting of borrowers and anti-money laundering checks.

While interest is prohibited under articles 409 to 412 of the Penal Code and is void under articles 204 and 714 of the Civil Code, interest is permitted under articles 77 and 90 of the Commercial Code, provided it does not exceed 12 per cent. In any case, UAE Federal Supreme Court Decision No. 14/9 of 28 June 1981 permits the charging of simple interest (presumably as opposed to compound interest) in connection with banking operations.

The DFSA issued a consultation paper in early 2017 called 'Crowdfunding: SME Financing through Lending', which proposed a regulatory framework to operate loan-based crowdfunding platforms in the DIFC. In summary, the DFSA proposed a regime whereby loan-based crowdfunding platforms in the DIFC:

- benefit from a new financial activity and licence for operating such a platform;
- apply appropriate prudential and conduct of business requirements for these platforms;
- disseminate appropriate risk warnings and disclosures to lenders and borrowers;
- conduct suitable due diligence on the borrowers as well as checks on lenders;
- deploy a business cessation plan in the event that it ceases operations; and
- follow rules in relation to transfer of rights and obligations between lenders.

On 1 August 2017, changes to the DFSA rules came into force that introduced rules relevant to crowdfunding. Additional rules, which included investment limits and property valuation requirements in the context of property crowdfunding, came into force on 1 July 2019.

Law stated - 11 June 2021

Crowdfunding

Describe any specific regulation of crowdfunding in your jurisdiction.

Financial services in the UAE are regulated either by the UAE Central Bank or the SCA depending on the nature of the activity. In respect of financial free zones in the UAE, such activities are regulated by the DFSA in the DIFC, and the FSRA in the ADGM. In particular, issues of securities by UAE companies are regulated under the UAE Companies Law (Federal Law No. 2 of 2015) (as amended by Federal Decree-Law No. 26/2020 on the amendment of certain provisions of Federal Law No. 2/2015 on Commercial Companies) and regulations issued by the SCA. As such, under the UAE Companies Law, only public joint-stock companies may offer securities by way of a public subscription through a prospectus. Other companies, whether incorporated in the UAE (onshore or in a free zone) or in a foreign jurisdiction, are prohibited from advertising including the invitation to a public subscription without the approval of the SCA. In practice, private joint-stock companies are entitled to issue securities to sophisticated investors by way of a private placement. Accordingly, this regulatory limitation restricts the ability of limited liability companies, the legal form adopted by most SMEs in the UAE, from raising funds through equity-based crowdfunding.

On 1 August 2017, changes to the DFSA rules came into force that introduced rules relevant to crowdfunding. Additional rules, which included investment limits and property valuation requirements in the context of property crowdfunding, came into force on 1 July 2019.

In October 2020, the UAE Central Bank published Circular No. 7 of 2020 Loan-Based Crowd Funding Activities Regulations to introduce a framework for licensing, regulating and monitoring loan-based crowdfunding platforms (CFPs), safeguard the financial system from the risks posed by such platforms, assist in administering the loans resulting from CFP operations as well as to safeguard the interests of the consumers in the UAE.

Law stated - 11 June 2021

Invoice trading

Describe any specific regulation of invoice trading in your jurisdiction.

Invoice trading currently falls within the activity of 'arranging credit' within the DIFC and is regulated as such by the DFSA. Similar provisions exist in the ADGM. With regard to onshore UAE, invoice trading will require a form of regulatory licence either from the UAE Central Bank (if providing credit) or the SCA (if invoices were to be considered as a financial product falling within the SCA's Promoting and Introducing Regulations – Regulation 3/RM of 2017). To the extent that services are merely promoted within onshore UAE, the DIFC or the ADGM, a Representative Office licence in the respective jurisdiction would be required.

Law stated - 11 June 2021

Payment services

Are payment services regulated in your jurisdiction?

Yes. In 2017, the UAE Central Bank had published its Regulatory Framework for Stored Values and Electronic Payment Systems, which covered digital payment services. This has since been replaced by the UAE Central Bank's Stored Value Facilities Regulation (the SVF Regulation), issued on 30 September 2020. In addition, the UAE Central Bank issued the Retail Payment Systems Regulation (the RPS Regulation) and Large Value Payment Systems Regulations (the LVPS Regulation) in January 2021. Together, the three regulations cover the regulatory framework for payment system providers in the UAE (Payment Services Regulations).

The SVF Regulation covers the licensing, enforcement and supervision of SVF in the UAE as well as non-UAE entities that promote SVF on a cross-border basis. A one-year transitional period has been provided from the date that the SVF Regulation came into force on 15 November 2020.

The RPS Regulation sets out the licensing, designation and oversight framework that the Central Bank intends to follow with respect to the licensing and designation of RPS. It aims to ensure the safety and efficiency and smooth and efficient operation of the financial infrastructure system.

The LVPS Regulation applies to LVPS operating in the UAE or those that accept clearing or settlement of transfer orders denominated in the UAE dirham both within the UAE and outside. The LVPS Regulation requires compliance with the provisions of the Principle of Financial Market Infrastructures. It also covers the licensing obligations and requirements in relation to LVPS as well as the ongoing requirements for designated LVPS.

A one-year transitional period ending on February 2022 has been provided for the RSP and LVPS Regulations.

Following the publication of the DFSA's Consultation Paper No. 125 on Proposals for Money Services in November 2019, the DFSA Rulebook COB Module has been amended, with effect from 1 April 2020, to introduce requirements for the provision of money services in relation to electronic money in the DIFC.

The FSRA has issued enhancements to its Regulations and Rules concerning Providing Money Services (PMS) in November 2020. The improvements includes amendments to the scope of PMS as well as the introduction of a new set of rules in the FSRA's COB Rulebook for payment accounts and stored value services as well as more risk-sensitive capital requirements for such services.

Law stated - 11 June 2021

Open banking

Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

Other than in the context of a regulatory or official investigation, there is no specific obligation in UAE legislation requiring the disclosure of data to third parties.

The general position is that financial institutions that are in a position to collect and store data from the public are bound by a duty of confidentiality. A breach of this duty of confidentiality could attract criminal liability under article 379 of the UAE Penal Code . Further, article 106 of the Banking Law requires the UAE Central Bank to keep confidential all banking data that it receives.

Law stated - 11 June 2021

Robo-advice

Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

The FSRA has issued a regulatory framework for digital investment managers (robo-advisers) operating in the ADGM. To supplement this, the FSRA has also released guidance to illustrate how its regulatory framework applies to robo-advisers in the ADGM. In particular, the guidance outlines:

- the regulatory permission that may be required to provide digital investments services in or from the ADGM; and
- how the FSRA will apply its authorisation criteria in key existing areas of technology governance, suitability and disclosure, and newer areas such as algorithm governance.

Law stated - 11 June 2021

Insurance products

Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Nothing in current UAE legislation (whether onshore UAE, DIFC or ADGM) specifically regulates fintech companies that wish to sell or market insurance products, and, therefore, the general regulation around the sale and marketing of insurance products in the relevant jurisdictions applies.

Insurance operations in onshore UAE will be regulated by the UAE Central Bank following the merger between the Insurance Authority and the Central Bank under Federal Decree Law No. 25 of 2020. Under the law, the UAE Central Bank will assume regulatory, supervisory, licensing and enforcement functions for the insurance sector. On completion of the merger, the UAE Central Bank will ensure the implementation of best practices and standards in executing its mandate to supervise and regulate the insurance sector.

The UAE Central Bank is committed to facilitating the advancements of new technologies across the financial sector as part of its finch strategy. This includes adopting insurtech for insurance services.

Detailed financial regulations around insurance companies were published at the end of 2014.

Although the Insurance Authority and the UAE Central Bank have merged, the rules and regulations issued by the

Insurance Authority under Federal Law No. 6 of 2007 will continue to apply to all licensed organisations until their replacement by the UAE Central Bank.

Law stated - 11 June 2021

Credit references

Are there any restrictions on providing credit references or credit information services in your jurisdiction?

On 15 April 2018, the SCA issued Chairman of the SCA Board of Directors' Decision No. 18/RM of 2018 Concerning the Regulations as to Licensing Credit Rating Agencies . Under these regulations, a credit rating is 'a periodic measure to determine and assess the ability of the rated entity to meet its financial liabilities, and potential risks that may affect it, and to evaluate the financial products and potential risks of acquiring them by the investor' and credit rating activities are regulated. To be eligible for a licence to carry on credit rating activities, an entity must have, among other things, a minimum of 2 million UAE dirhams in capital and consent from the UAE Central Bank (should the licence application be subject to their mandate).

In the DIFC, 'operating a credit rating agency' is a regulated activity that would require a DFSA licence. Similar provisions exist in the ADGM.

However, individual credit reference and information services are possible in the UAE through the Al Etihad Credit Bureau (AECB), which is a public joint stock company wholly owned by the UAE federal government. According to UAE Federal Law No. 6 of 2010 concerning Credit Information, the AECB is mandated to regularly collect credit information from financial and non-financial institutions in the UAE. The AECB aggregates and analyses this data to calculate credit scores and produce credit reports that are made available to individuals and companies in the UAE. The AECB collects information on individuals and companies from banks, finance companies and telecoms companies. Additional information from other sources such as utilities, real estate, government and other entities are planned to be added in the future. Financial institutions in the UAE are mandated by law to supply the AECB with all credit information on a monthly basis.

Law stated - 11 June 2021

CROSS-BORDER REGULATION

Passporting

Can regulated activities be passported into your jurisdiction?

There is currently no general passport regime either in the Dubai International Financial Centre (DIFC), the Abu Dhabi Global Market (ADGM) or onshore UAE, or between these jurisdictions.

It was announced in May 2017 that the Dubai Department of Economic Development (the relevant commercial registry for onshore UAE within the Emirate of Dubai) and the DIFC Authority had signed a memorandum of understanding to allow companies operating within DIFC and holding a commercial licence issued by the DIFC Registrar of Companies to obtain licences to operate in mainland Dubai. Similarly, the ADGM and Abu Dhabi Department of Economic Development also signed a memorandum of understanding having a similar effect. Notwithstanding the efforts to create a facilitative cross-border regime between onshore UAE within the Emirate of Dubai and the DIFC at a commercial licence level, passporting with regard to financial services between any of the onshore UAE regulators and the Dubai Financial Services Authority (DFSA) or Financial Services Regulatory Authority (FSRA) has yet to be formally announced (other than in the case of marketing a domestic (ie, DIFC, ADGM or onshore UAE) domiciled fund across the three financial services jurisdictions within the UAE).

Requirement for a local presence

Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

It is possible for fintech companies to market on a cross-border basis into onshore UAE without having to obtain a licence. If marketing activities are undertaken on a true cross-border basis (ie, by telephone, website or email from outside the UAE) they should not be subject to UAE regulation. To ensure that marketing activities are conducted on a true cross-border basis and not deemed to be conducting business in the UAE, several guidelines should be followed, which include not having a physical or legal presence in the UAE, marketing only towards non-natural qualified investors and making any subscription payments made outside the UAE.

In relation to cross-border marketing into the DIFC, there are several guidelines that should be followed to reduce the risk of marketing activities being treated as having taken place 'in' the DIFC, such as not having a physical or legal presence in the DIFC, keeping marketing materials generic and only made to certain types of pre-identified 'professional clients' (as defined under the DFSA's Conduct of Business Rules) and performing all generic marketing from outside the DIFC.

With regard to regulated activities where a licence is required from a UAE financial services regulator (including the UAE Central Bank, Securities and Commodities Authority, DFSA or FSRA), a fintech company would need to be locally established in the relevant jurisdiction to obtain a licence. Note, however, that the initiatives launched by the ADGM and the DIFC require lighter regulatory oversight for qualified participants.

Law stated - 11 June 2021

SALES AND MARKETING**Restrictions**

What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

There are a number of restrictions on the offering or promotion of financial services in onshore UAE, the Dubai International Financial Centre and the Abu Dhabi Global Market, and in many cases corresponding exemptions relating to these promotions, all of which differ according to the type of product or service offered.

Law stated - 11 June 2021

CHANGE OF CONTROL**Notification and consent**

Describe any rules relating to notification or consent requirements if a regulated business changes control.

Under the Dubai International Financial Centre and Abu Dhabi Global Market frameworks, there are detailed provisions relating to changes of control, including where notifications need to be made with the Dubai Financial Services Authority or the Financial Services Regulatory Authority respectively, or where their prior approval needs to be obtained. In both cases, these are contained in the general modules of the respective regulator's rulebook. Similar, although less detailed, provisions exist within the regulatory frameworks relevant to the UAE Central Bank and the Securities and

Commodities Authority. Although the Insurance Authority and the UAE Central Bank have merged, rules and regulations issued by the Insurance Authority under Federal Law No. 6 of 2007 will continue to apply to all licensed organisations until their replacement by the UAE Central Bank.

Law stated - 11 June 2021

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

In March 2021, the UAE Securities and Commodities Authority (SCA) introduced the Board of Directors Decision No. 23/R.M of 2020 Concerning the Regulation of Cryptoassets and Administrative Decision No. 11 of 2021 Concerning Guidance for Cryptoasset Regulations. It is now a specific requirement for persons conducting financial activities in respect of crypto-assets to apply the Financial Action Task Force's guidance and recommendations in respect of the mitigation of AML risks for Virtual Assets and Virtual Asset Services Providers, in addition to any standards issued by the UAE Central Bank in respect of FATF guidance. The SCA's regulations on virtual assets, that entered into force in 2020, have also introduced financial crime controls, including AML protections and market abuse provisions, to all market participants. The regulations permit regular enhancements to the standards and requirements in line with global developments.

Outside the crypto-asset regulations, the UAE's AML provisions apply directly to financial institutions and designated businesses and professions. While the UAE's anti-bribery and corruption (ABAC) provisions apply to all individuals and entities in the UAE, there are currently no positive requirements in relation to ABAC; however, it is a positive obligation to notify the authorities if you become aware of any criminal offence.

In the Dubai International Financial Centre (DIFC), under article 71(1) of the DIFC Regulatory Law, the DIFC regime requires compliance with the federal regime. The federal legislation governing money laundering and terrorist financing is also applicable in the DIFC. The Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module to the Dubai Financial Services Authority (DFSA) Rulebook applies to entities in respect of their activities carried on in or from the DIFC. The procedures that must be put in place include applying a risk-based approach that is objective and proportionate to the risks, based on reasonable grounds, properly documented and reviewed and updated at appropriate intervals. Effective AML systems and controls must also be established and maintained to prevent opportunities for money laundering. A risk-based assessment must be undertaken for every customer in order to assign the customer a risk rating proportionate to the customer's money laundering risks. Customer due diligence must be undertaken to verify the identity of the customer and the beneficial owner and understand the source of funds. This should be ongoing by monitoring transactions and complex and unusual transactions. A money laundering reporting officer must be appointed with responsibility for implementing and overseeing compliance; the officer must have an appropriate level of seniority and independence to act in the role and be resident in the UAE.

Similar to the DIFC, the federal legislation governing money laundering and terrorist financing also applies within the Abu Dhabi Global Market (ADGM). The ADGM's AML rules are contained in the Anti-Money Laundering and Sanctions Rules and Guidance Module to the Financial Services Regulatory Authority Rulebook (the ADGM AML Module). According to the ADGM AML Module, an entity must have policies, procedures, systems and controls that ensure compliance with the federal law, enable suspicious customers and transactions to be detected and reported, ensure the entity is able to provide an appropriate audit of trail of a transaction, and ensure compliance with any other obligations as contained in the ADGM AML Module. The DIFC's AML rules are contained in the DFSA's Anti-Money Laundering, Counter Terrorist Financing and Sanctions Module.

Guidance**Is there regulatory or industry anti-financial crime guidance for fintech companies?**

There is no guidance specifically targeted at fintech companies. The regulatory guidance on financial crime is contained in the DFSA AML rules, the ADGM AML rules and the applicable federal laws and regulations. Federal legislation targeting financial criminal activities applies equally to individuals and companies operating or present in the commercial free zones, financial free zones and throughout all Emirates of the UAE.

Law stated - 11 June 2021

PEER-TO-PEER AND MARKETPLACE LENDING**Execution and enforceability of loan agreements**

What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

If any security is based within the UAE, the agreements should be entered into with a local security agent whereby the local security agent holds security on behalf of the service provider. Security may need to be perfected, depending on the type of asset to which the security relates.

In the Dubai International Financial Centre (DIFC), there is no licensing or registration requirement for a lender to take security over DIFC-based assets. Any real estate mortgages must be registered with the DIFC Register of Real Property without delay. For all other types of security interest, a security interest will be considered perfected if it has 'attached' and a financing statement has been filed with the DIFC Security Register. For security to 'attach', different procedures will need to be taken depending on the type of security interest under either the DIFC Real Property Law or the DIFC Law of Security (land, shares in a DIFC company, bank accounts, receivables, insurance, floating charges, etc). Similar protection requirements exist within the Abu Dhabi Global Market (ADGM).

Law stated - 11 June 2021

Assignment of loans

What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

In onshore UAE, an assignment of rights requires only notification from the assignor to the counterparty, confirming the assignment to the assignee. Where this is not possible, the bank may require this income to be deposited into a collection account, which will be covered by an accounts pledge.

In the DIFC, an assignment is perfected when it attaches (ie, when it becomes enforceable against the debtor or third party). The position in the ADGM is similar.

Assuming there are no contractual restrictions on transfers, the position in each of the relevant jurisdictions is as follows.

Onshore UAE

Article 1109 of the UAE Civil Code (Federal Law No. 5 of 1985) provides that the assignor, the assignee and the borrower must consent for there to be a valid assignment. There are Federal Supreme Court judgments holding that, in commercial matters, the consent to the assignment by the borrower is not necessary, although evidence will be required that the borrower has been notified of the assignment.

UAE law does not generally recognise the concept of beneficial ownership. Accordingly, an assignee of certain rights otherwise than in accordance with the UAE will not be recognised as having a beneficial interest in the rights to be assigned.

DIFC

The DIFC makes a distinction between assignment of rights and assignment of obligations. The DIFC Contract Law No. 6 of 2004 (the DIFC Contract Law) sets out several limitations on assignments and delegations. Under section 94 of the DIFC Contract Law, a contractual right can be assigned unless the substitution of a right of the assignee for the right of the assignor would:

- materially change the duty of the borrower;
- materially increase the burden or risk imposed on the borrower by his or her contract;
- materially impair the borrower's chance of obtaining return performance; or
- materially reduce its value to the obligor.

A contractual obligation can be transferred unless the obligee has a substantial interest in having the obligor perform or control the acts promised.

While there are no explicit requirements under the DIFC Contract Law to notify borrowers of an assignment or transfer, it is advisable that the borrower be notified of this assignment or transfer.

ADGM

In the ADGM, as per the ADGM Application of English Law Regulations 2015, the principles of English law relating to the assignment of rights and transfer of obligations would apply. Under English law, an assignment is perfected once notice is given to the borrower. In the absence of such notice, the assignee's rights under the assignment become an equitable right. The transfer of an obligation would require the consent of the borrower.

In October 2020, the ADGM issued Consultation Paper No. 4 of 2020 inviting public opinion on its proposed amendments and updates to the ADGM Application of English Law Regulations 2015. The intention of the proposal is to reflect in ADGM law the amendments made to the English Statutes, as well as the introduction of new English Statutes in England. The Consultation Paper was issued for a period of 30 days and is awaiting results.

Borrower consent may be required prior to any assignment of loans.

Law stated - 11 June 2021

Securitisation risk retention requirements

Are securitisation transactions subject to risk retention requirements?

There are currently no risk retention requirements within the onshore UAE legislation or the legislation of the DIFC or

ADGM. However, while not imposed by UAE law, securitisations originating in the UAE may still be subject to risk retention rules depending on the relevant investor base that is being marketed to.

Law stated - 11 June 2021

Securitisation confidentiality and data protection requirements

Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

There are likely to be contractual duties of confidentiality in the relevant local documentation that may require borrower consent prior to disclosure concerning the loans or the borrowers. Further, if the borrowers are data subjects for the purposes of the DIFC Data Protection Law or the ADGM Data Protection Law, the special purpose vehicle may be treated as a processor for the purposes of those laws.

Law stated - 11 June 2021

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

The Financial Services Regulatory Authority (FSRA) has issued a regulatory framework for digital investment managers (robo-advisers) operating in the Abu Dhabi Global Market (ADGM). To supplement this, the FSRA has also released guidance to illustrate how its regulatory framework applies to robo-advisers in the ADGM. In particular, the guidance outlines:

- the regulatory permissions that may be required to provide digital investments services in or from the ADGM; and
- how the FSRA will apply its authorisation criteria in key existing areas of technology governance, suitability and disclosure, and newer areas such as algorithm governance.

Otherwise, there are currently no rules or regulations governing the use of artificial intelligence or automated investment advice (ie, robo-advisory services) in the Dubai International Financial Centre (DIFC) or onshore UAE. Those conducting these automated investment activities will need to ensure that they are authorised to provide investment advice, irrespective of the method of delivery.

The Dubai Financial Services Authority's (DFSA) Innovation Testing Licence regime has been used to issue licences relevant to automated investment advisory services. In these cases, there are bespoke disclosures, reporting conditions and monitored progress in line with an agreed 'regulatory test plan'. Firms intending to provide robo-advisory services have also been accepted into the ADGM's Regulatory Laboratory (which provides a controlled environment for fintech participants to develop and test innovative fintech solutions).

Law stated - 11 June 2021

Distributed ledger technology

Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are currently no dedicated rules or guidelines regarding the use of distributed ledger technology (DLT) or blockchain.

The UAE federal government and certain emirate-level governments have publicly committed to the creation of problem statements and use cases to enable government services to benefit from DLT and, in particular, blockchain. Examples of this include the government of Dubai's public commitment to have all government services and transactions on the blockchain by 2020.

In some areas, UAE law is permissive as regards the use of DLT and distributed digital ledgers or databases in scenarios where parties intend to create legal relations; for example, article 12 of Federal Law No. 1 of 2006 on Electronic Commerce and Transactions, which seems to have foreseen 'smart contracts' by confirming the validity and enforceability of contracts formed through computer programs that include two or more electronic information systems present and preprogrammed to carry out the transaction, even if no individual is directly involved. The UAE government launched the Emirates Blockchain Strategy 2021, which aims to transform government transactions into the blockchain platform by the end of 2021.

Recently, the DFSA issued Consultation Paper No. 138 on the Regulation of Security Tokens. The paper sets out the DFSA's proposal to update its regulatory regime to facilitate DLT-based activities related to the provision of financial services relating to security tokens. The results of the paper are pending.

Law stated - 11 June 2021

Crypto-assets

Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

The Stored Value Facilities Regulation allows the use of crypto or virtual assets as a stored value when purchasing goods and services. However, it was later clarified that such assets are not recognised legal tenders in the UAE, with the official legal tender being the UAE dirham. These assets may also be used as a form of investment and as such be subject to the SCA Regulations.

The SCA issued Board of Directors Decision No. 23/R.M of 2020 Concerning the Regulation of Cryptoassets and Administrative Decision No. 11 of 2021 Concerning Guidance for Cryptoasset Regulations. The regulatory scheme aims to provide a licensing regime for the offering of cryptoassets in the UAE. The Decision defines cryptoassets as:

The regime also applies to security tokens and commodity tokens.

The ADGM regulatory framework for virtual assets (first introduced on 25 June 2018 and amended in February 2020) features a number of guidance points related to virtual assets and digital wallets.

In November 2019, the DFSA published Consultation Paper No.125 on Proposals for Money Services. In the paper, the DFSA set out its proposal to allow certain activities relating to money services that have emerged owing to rapid advancements in technology, with the DFSA recognising that these activities could promote the growth of regulated financial services activities in DIFC and provide greater protection and choices to users of money services. One of the

activities it proposed to allow was the provision of money services (as defined in the DFSA Rulebook Conduct of Business Module (COB)) in respect of electronic currency. Amendments to the DFSA Rulebook COB Module came into force on 1 April 2020, introducing requirements for the provision of money services in relation to electronic money in the DIFC.

Law stated - 11 June 2021

Digital currency exchanges

Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

Following a public consultation, on 25 June 2018 the ADGM FSRA issued its framework for the regulation of spot crypto-asset activities, including those undertaken by exchanges, custodians and other intermediaries in the ADGM. Specifically, the FSRA introduced the new regulated activity of 'Operating a Crypto Asset Business' that covers, among other things, the arranging, buying, selling, custody provision, marketing and advising on the merits of the buying or selling of 'Accepted Crypto Assets'. The regime also included a regulatory framework for the operation of a 'Crypto Assets Exchange' and a 'Crypto Asset Custodian'.

On 14 May 2019, the FSRA issued its updated guidance addressing, among other things:

- **Stablecoins and fiat tokens:** stablecoins that are fully backed by fiat currencies (fiat tokens) will be treated as a form of digital representation of money. Where used as a payment instrument for the purposes of money transmission as defined under the ADGM's Financial Services and Markets Regulations 2015 (FSMR), the activity will be licensed and regulated as 'providing money services'.
- **Custody:** further clarity on the types of crypto-asset custody activities that can be undertaken and setting out FSRA expectations in terms of custody governance and operations.
- **Technology governance:** further enhancements and clarifications are introduced, including in relation to changes in the underlying protocol of a crypto-asset that results in a fork (coding change), and the associated governance and control expectations for crypto-asset exchanges and licence-holders.
- **FSRA Anti-Money Laundering and Sanctions Rules and Guidance:** as the Anti-Money Laundering Rulebook applies in full to the regulated activity of crypto-asset operators or holders, the guidance has been updated with the latest local and global changes and provides further clarity on the use of new regulatory and surveillance technologies in this area.

As part of its ongoing commitment to regularly update and improve its crypto-regulatory framework based on global developments, the FRSA updated its virtual asset regulatory framework in February 2020.

Among other things, the key amendments included:

- changing the definition of 'crypto-asset' to 'virtual asset' (to align the terminology in the legislation with that of the Financial Action Task Force); and
- moving the applicable regulations and rules from the bespoke category of 'Operating a Crypto Asset Business' to the respective underlying regulated activities (eg, providing custody, operating a multilateral trading facility and dealing in investments). This is to better reflect the nature of the underlying activities in relation to virtual assets.

In October 2019, the SCA issued draft legislation – the Regulation for Issuing and Offering Crypto Assets – that, when

implemented, will directly regulate cryptoassets in the UAE, including crypto-exchanges. In 2020, the SCA issued Board Decision No. 23/R.M 2020 which applies to exchanges based on crypto assets.

Currently, there are no other rules in onshore UAE, the DIFC or the ADGM specific to the operation of digital currency exchanges or brokerages.

Law stated - 11 June 2021

Initial coin offerings

Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

Not specifically.

On 13 September 2017, the DFSA issued a General Investor Statement on Cryptocurrencies that warned that it considered initial coin offerings (ICOs) to be high-risk investments owing, in part, to the complex systems and technology on which they are based. According to the DFSA General Statement, cryptocurrencies and ICOs have their own unique risks, which may not be easy to identify or understand. The statement urged potential investors to conduct due diligence and exercise caution. This is a similar approach to that taken by the UK's Financial Conduct Authority, which released a consumer warning on the risks of ICOs on 12 September 2017.

In the ADGM, the FSRA is moving towards greater regulation of virtual currencies under its principal financial services legislation, the ADGM FSMR, as amended. The FSRA issued its Supplementary Guidance – Regulation of Initial Coin/Token Offerings and Virtual Currencies under the FSMR on 9 October 2017, which is aimed at those wanting to use ICOs to raise funds, investors and generally anyone considering transacting in virtual currencies. It states that whether or not an ICO is regulated under the FSMR, it will be assessed by the FSRA on a case-by-case basis. If the tokens in an ICO are assessed to exhibit the characteristics of a security (as defined in the FSMR, such as, among other things, 'certificates representing certain financial instruments' or 'instruments giving entitlements to investments'), the FSRA may deem them to be a security under section 58(2)(b) of the FSMR, which empowers the FSRA to deem any investment a security under ADGM regulation. The ADGM Guidance also outlines that derivatives of virtual currencies or security tokens will be regulated as 'specified investments' under the FSMR. However, the ADGM Guidance states that other virtual tokens that do not exhibit the features and characteristics of a regulated investment or instrument under the FSMR will be treated as commodities and not regulated as specified investments under the FSMR.

Outside the UAE's financial free zones in onshore UAE, the UAE Central Bank issued the Stored Value Facilities Regulation in 2020, which repealed and replaced the Regulatory Framework for Stored Values and Electronic Payment Systems in 2017. The UAE Central Bank did clarify that the only legal tender is the UAE dirham and would not recognise virtual or crypto-assets as legal tender. Nevertheless, the SVF Regulations state that such assets may be used as stored value when purchasing goods and services.

Similarly, the SCA issued a public warning on ICOs in February 2018, cautioning investors to be aware of some risks associated with these investments, such as the potential for fraud, high volatility in light of speculation, and the fact they are not specifically catered for under existing SCA regulations. Whether the SCA will consider ICOs as a 'foreign security' under existing legislation, such as the SCA Promoting and Introducing Regulations (SCA Decision No. 3/R of 2017), remains to be seen.

Law stated - 11 June 2021

DATA PROTECTION AND CYBERSECURITY

Data protection

What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The UAE does not yet have a specific, standalone data protection law. Instead, various general and sector-specific laws and regulations govern aspects of the processing of personal data in the UAE. For example, the UAE Constitution provides for a right to freedom and secrecy of communications; the Penal Code and Cybercrime Law provide for a range of criminal offences prohibiting the disclosure or publication of private information and the interception of personal communications; the Civil Code and Labour Law set out certain obligations on employers when dealing with employee information; another law governs the collection, processing and disclosure of credit-related information; and telecoms operators are subject to special regulations regarding the protection of subscriber information.

While there has been no formal confirmation or release, a draft data protection law is generally known to be under consideration by the UAE government.

The Abu Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC) have each introduced standalone laws governing the processing of personal data by organisations operating in their respective zones.

The DIFC's much anticipated new and refreshed Data Protection Law DIFC Law No. 5 of 2020 was enacted on 1 June 2020 and became enforceable from 1 October 2020. The data protection law is enforced by the Commissioner of Data Protection.

On 11 February 2021, the ADGM enacted the Data Protection Regulations 2021, which will replace the current Data Protection Regulations 2015. The regulations have been modelled on international best practice and, in particular, the European Union's General Data Protection Regulation but have been adapted to cater to the needs of the ADGM. A key feature of the new regulations is the establishment of an independent Office of Data Protection headed by a Commissioner of Data Protection. The Data Protection Regulations of 2015 will continue to apply until the end of a transition period, starting from 14 February 2021, of 12 months for current establishments and six months for new establishments.

The DIFC and ADGM laws require that personal data is processed in a manner that is fair, lawful and secure.

Fintech-specific rules and regulations

The SVF Regulations require licensees to maintain adequate systems and policies related to data protection to ensure the protection of information from unauthorised access, ensure encryption of sensitive data, retrieval access controls must also be enforced to ensure confidentiality and integrity of the databases. The SVF Regulation also require licences to implement an information retention and disposal policy to limit the data storage amount and retention time. In addition, the RPS Regulation also imposes data protection, security and integrity obligations on RPS licensees.

Anonymisation and aggregation of personal data

There are no specific legal requirements or regulatory guidance in the UAE dealing with the anonymisation or aggregation of personal data used for commercial gain. This, and the absence of a specific data protection law in the UAE (outside the financial free zones), has the result that there is a wider scope for the commercial exploitation of data for commercial purposes in the UAE.

The definitions of 'personal data' in the ADGM and DIFC data protection laws each require the individual to whom the data relates to be identifiable. The guidance published by the DIFC Commissioner of Data Protection suggests that, as

data that is stripped of all personal identifiers will no longer relate to an identifiable individual, the DIFC data protection law will no longer apply.

The guidance cautions that complete anonymisation may be difficult to achieve in practice, as data will still be protected if it is possible to identify an individual indirectly using the data. The guidance also reminds organisations that the act of anonymisation is itself an activity that must be conducted in compliance with the DIFC data protection law. The guidance published in respect of the ADGM data protection regime does not provide further comment on the anonymisation or aggregation of personal data.

Law stated - 11 June 2021

Cybersecurity

What cybersecurity regulations or standards apply to fintech businesses?

Fintech businesses must comply with the UAE Cyber Crimes Law (Federal Law 5 of 2012 on Combatting Cybercrimes), the provisions of which broadly relate to IT security, state security and political stability, morality and proper conduct and financial and commercial issues arising from the use of the internet or IT infrastructure. The Cyber Crimes Law has extraterritorial effect.

Law stated - 11 June 2021

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

There is no regulatory guidance setting out notification or approval requirements where a financial services company in the UAE intends to outsource a material aspect of its business. However, depending on the nature of the company and the functions being outsourced, there may be other restrictions. For example, the Stored Value Facilities Regulation allows licensed businesses to outsource processes to third-party service providers, including independent third parties or companies within the licensee's group, subject to approval from the UAE Central Bank.

Law stated - 11 June 2021

Cloud computing

Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

There are regulations that set parameters around the use of cloud computing in the context of outsourcings, which includes those within the financial services industry.

Organisations carrying out functions that are regulated by the Dubai Financial Services Authority (in the Dubai International Financial Centre) or the Financial Services Regulatory Authority (in the Abu Dhabi Global Market) have specific obligations in relation to material outsourcings, which in practice will include many cases of the use of cloud computing services. In respect of each material outsourcing, the organisation must implement policies and risk management programmes, enter into an appropriate contract with the service provider incorporating certain minimum terms, and notify the relevant regulator of the outsourcing arrangement. The Stored Value Facilities Regulation allows licensed businesses to outsource processes to third-party service providers, including independent third parties or

companies within the licensee's group, subject to approval from the UAE Central Bank. A separate section of rules governing outsourcing apply when an outsourcing is considered for an operational function or activity, although no specific distinction or guidance is given in relation to cloud computing solutions.

Law stated - 11 June 2021

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

Which intellectual property rights are available to protect software, and how do you obtain those rights?

Original computer programs and related software applications are protected by copyright as literary works. Databases underlying software programs can also attract copyright protection. Copyright arises automatically as soon as the relevant literary work is created, so when a computer program is recorded, software lines are coded or a database is created. There is no requirement to register these rights to be able to have them recognised or enforce them against a third party in the UAE.

If the software code has been kept confidential, it may also be protected as confidential information and unauthorised disclosure can attract criminal sanctions. No registration is required.

As computer programs are not specifically excluded from patentability under UAE legislation, so long as registration formalities are followed, it is possible in principle to obtain patent protection for software-implemented inventions and business methods. It is likely to be more difficult, however, for these inventions to meet the criteria of novelty, inventiveness and industrial applicability as required by UAE legislation.

Law stated - 11 June 2021

IP developed by employees and contractors

Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

Copyright in works created by an employee in the course of employment will not automatically be owned by the employer. Such a work will be owned by the individual employee or, if created alongside others, may be protected as a joint work. It may be possible for the employer to assert that a work created under the supervision or direction of the employer meets the conditions for protection as a collective work under UAE legislation.

In most cases, however, employers seeking to take ownership of copyright-protected works created by employees must do so by way of written assignment. Under the Copyright Law, a provision in a contract that purports to assign the copyright in more than five future works will be void.

In the context of patents, provided that an employee's role includes inventive activities, inventions created by an employee in the course of an employment contract are automatically owned by the employer, unless otherwise agreed. Different rules apply if the employee's role does not include inventive activities. In these cases, the employer may exercise an option to take ownership of the invention within four months of becoming aware of the invention and the employee is entitled to receive fair compensation.

The same rules that apply to employee creators of copyright-protected works apply in respect of works created by contractors and consultants. These works will be owned by the individual creator or, if created alongside others, may be protected as joint works.

As against employee creators, different rules apply in respect of inventions created by a contractor or consultant during the course of a contract. In these cases, the contractor or consultant will own the invention, unless otherwise agreed.

Unlike the Federal Law position on copyrights in an employer–employee relationship, under DIFC Law No. 4 of 2019 on Intellectual Property, the employer has automatic ownership rights over works created by employees when produced within the scope of employment or while using the employer’s resources, unless otherwise agreed by them. The same position applies to patents. The law also regulates ownership rights over works created by contractors or consultants.

Law stated - 11 June 2021

Joint ownership

Are there any restrictions on a joint owner of intellectual property’s right to use, license, charge or assign its right in intellectual property?

Joint owners of a copyright-protected work in which it is not possible to separate the contributions of each owner cannot exercise their rights to use, license or assign the work individually, unless otherwise agreed in writing.

Where multiple authors contribute different kinds of art to a single work, they may each exploit their individual contributions provided that this does not damage the exploitation of the joint work. The legal position is less clear in relation to works that include contributions of the same kind of art from multiple contributors.

A joint owner of a patented invention may exploit or assign his or her rights independently of the other patentees. However, joint patentees may only license the exploitation of the patent jointly with the other patentees.

Under DIFC Law No. 4 of 2019 on Intellectual Property, rights over an invention created by two or more persons, will be shared equally between them unless otherwise agreed in writing.

Law stated - 11 June 2021

Trade secrets

How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

The UAE legislation dealing with patents and industrial designs also includes specific protection for trade secrets and know-how. Employees have specific statutory duties to keep the commercial and industrial secrets of their employers confidential and may be criminally liable in cases of unlawful use or disclosure of information. Trade secrets and confidential information more broadly are commonly protected by way of contractual obligations.

Court proceedings in the UAE are not held in public and there is therefore less of a concern around maintaining the confidentiality of trade secrets in this context.

DIFC Law No. 4 of 2019 on Intellectual Property provides protection to trade secrets if obtained by improper means. However, it may be possible to uncover trade secrets through legitimate means.

Law stated - 11 June 2021

Branding

What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Brands can be protected as registered trademarks in the UAE. An application for registration and other formalities must

be pursued to obtain protection. A law recognising a unified trademark regime for Gulf Cooperation Council countries has been decreed in the UAE but has not yet entered into force.

The UAE trademark database can be used to identify registered trademark rights and, therefore, help ensure that a fintech business does not infringe existing brands. The database is not available to the public but the law provides for a right to obtain a certified extract of the contents of a register upon payment of a fee. Applicants must pay a separate fee to search each class for existing trademark rights.

It is highly advisable for new businesses, perhaps using the services of specialist trademark attorneys, to check whether the database enquiry results indicate earlier registrations that are identical or similar to their proposed brand names and marks. It may also be advisable to conduct internet searches for any unregistered trademark rights that may prevent use of the proposed mark.

Law stated - 11 June 2021

Remedies for infringement of IP

What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Remedies available to individuals or companies include:

- precautionary measures, including requirements to cease the use of an infringing item;
- confiscation or destruction of infringing items;
- damages; and
- publication orders.

The UAE legislation dealing with intellectual property rights, including in respect of patents, designs, trademarks and copyright, provides for criminal liability in various cases of infringement.

DIFC Law No. 4 of 2019 on Intellectual Property introduces penalties for infringement of intellectual property rights. The DIFC courts can also issue injunction orders and award damages resulting from the violation of intellectual property law.

Law stated - 11 June 2021

COMPETITION

Sector-specific issues

Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

Since the enactment of Federal Law No. 12 of 2012, the UAE has had a standalone, federally applicable competition law that covers anticompetitive agreements, abuse of dominance and merger control; however, the law also has a list of sectors that are entirely excluded from its scope. One of these wholly excluded sectors is the financial sector. The list of excluded sectors and other important aspects of the competition regime in the UAE are within the discretion of the Ministry of Economy, and fintech businesses in the UAE will need to consider their specific competition law issues to assess their exposure. Looking ahead, there is expected to be increased consolidation in the banking sector and an expectation of greater collaboration, information-sharing and other horizontal arrangements, all of which could give rise to competition law risks in the UAE.

TAX**Incentives**

Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

There are no special incentives. However, onshore UAE, the Dubai International Financial Centre and Abu Dhabi Global Market are all currently low or zero-tax jurisdictions.

Law stated - 11 June 2021

Increased tax burden

Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

There are no relevant new or proposed tax laws or guidance.

Law stated - 11 June 2021

IMMIGRATION**Sector-specific schemes**

What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

Once an employee enters the UAE on an entry permit, the employer must make an application for a residence visa to the immigration authorities. Before the visa is granted, the employee must pass a medical examination. These requirements must be satisfied within 60 days of the employee's entry into the UAE on the entry permit. Residence visas are typically valid for two years outside the free zones and three years for employees within a free zone. The total cost of the residence visa and the required permits depends on the nature of the company's activity and whether the employee is hired within or outside the UAE. The cost outside the free zones ranges from US\$400 to US\$1,200. Free zone costs can differ.

Both financial free zones in the UAE offer start-up-specific licences that, if obtained, provide for the recruitment of skilled staff from outside of the UAE. In 2018, the Abu Dhabi Global Market (ADGM) introduced the ADGM Tech Start-up Commercial Licence, under which it is possible to secure up to four UAE residence visas. In the Dubai International Financial Centre (DIFC), the DIFC FinTech Commercial Licence enables fintech start-ups to apply for residence visas for their staff, the number of which is dependent on office space (generally one visa per 80 square feet).

Investor visas are available to shareholders and proprietors.

The UAE government announced the UAE Strategy for Talent Attraction and Retention, an initiative aimed at enhancing the country's attractiveness to foreign investments and talents. The strategy aims to position the UAE among the top 10 countries in the global talent competitiveness indices, ensure the availability of talented workforce all across strategic sectors and cement the UAE's image as an ideal destination for living and working.

The UAE also announced its remote working visas for overseas professionals for a period of one year to attract talents and expertise from all over the world.

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends to note?

No updates at this time.

Law stated - 11 June 2021

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

UAE economic initiatives

UAE authorities have introduced a series of temporary measures intended to support the citizens of the UAE and businesses affected by the covid-19 outbreak.

In March 2020, the UAE Cabinet announced that it would be providing 126 billion dirhams of financial support to the economy. As of 5 April 2020, this support package was doubled.

The UAE Central Bank also introduced the Targeted Economic Support Scheme to facilitate temporary relief from the payments of principal and interest or profit on outstanding loans for all affected private sector corporates, small and medium-sized companies (SMEs) and individuals. The relief will not apply, however, to government loans nor loans from foreign entities.

Establishment of Dubai's Startup Hub and remote access

The Dubai Chamber of Commerce and Industry's entrepreneurship initiative – the Dubai Startup Hub – has provided its first wholly online event for its members. Forty new members participated and can benefit from online mentorship to support entrepreneurs in their new ventures during this difficult period.

Small businesses initiatives in Abu Dhabi

The Abu Dhabi Department of Economic Development and the Abu Dhabi Department of Finance, in conjunction with Abu Dhabi registered banks, have introduced a series of initiatives to assist SMEs that are experiencing the effects of the outbreak. These measures include (but are not limited to) reducing banking fees and charges, reducing interest charges on new borrowing and deferring instalments on existing loans.

Stabilisation initiatives of market values

The UAE Securities and Commodities Authority (SCA) has introduced a 5 per cent limit on the reduction of stock prices across all sectors in the UAE. The cap specifies the maximum permissible decline in the price of stocks during one trading day and applied from 18 March 2020 until further notice.

Dubai free zone initiatives

Free zones operating within Dubai will benefit from the Dubai Free Zone Council's package. Along with other free zones, the DIFC has introduced additional measures for new and existing DIFC entities, including discounted application fees, a waiver of certain fees and extensions to returns and reports filing deadlines.

Financial crime risks

The supervisory bodies of the UAE (including the Central Bank, SCA, Dubai Financial Services Authority and Abu Dhabi Global Market) have issued the Joint Guidance on the Treatment of Financial Crime Risks and Obligations in the UAE in the context of the Covid-19 Crisis . The guidance recognises that the pandemic could lead to altered patterns of normal and suspicious transactions behaviour. Among other actions, financial institutions are required to revisit and consider their governance, operational and risk frameworks in response to these exceptional circumstances to ensure that they remain compliant with their regulatory obligations. The guidance also reminds financial institutions to maintain their customer due diligence requirements as a priority and encourages the use of technology to address the difficulties in verifying identities during this time.

Law stated - 11 June 2021

Jurisdictions

	Australia	Piper Alderman
	Belgium	Simmons & Simmons
	Brazil	Machado Meyer Advogados
	Canada	Stikeman Elliott LLP
	China	Simmons & Simmons
	Denmark	Plesner Advokatpartnerselskab
	Egypt	Soliman, Hashish & Partners
	France	Kramer Levin Naftalis & Frankel LLP
	Germany	Simmons & Simmons
	Gibraltar	Ince
	Hong Kong	Simmons & Simmons
	India	Kochhar & Co
	Indonesia	SSEK Legal Consultants
	Ireland	Matheson
	Japan	Anderson Mōri & Tomotsune
	Kenya	Bowmans
	Liechtenstein	NÄGELE Attorneys at Law
	Malta	Ganado Advocates
	Mexico	Nader Hayaux & Goebel
	Netherlands	Simmons & Simmons
	New Zealand	Anderson Lloyd
	Pakistan	Asma Hamid Associates
	Singapore	Simmons & Simmons
	South Africa	Bowmans
	Spain	Simmons & Simmons

 Switzerland	Niederer Kraft Frey
 Taiwan	Lee and Li Attorneys at Law
 Turkey	SRP Legal
 United Arab Emirates	Simmons & Simmons
 United Kingdom	Simmons & Simmons
 USA	Seward & Kissel LLP
 Vietnam	YKVN