

United Arab Emirates – New Regulations for Stored Value Facilities

New regulations overhaul regulatory framework for digital payments in the UAE.

Key points:

- The new Stored Value Facilities (SVF) Regulation repeals and replaces the 2017 SVEPS Regulation governing digital payments business in the UAE, and streamlines the applicable regulatory framework.
- Among other changes, the SVF Regulation includes detailed provisions relating to the licensing process and introduces an express prohibition on the marketing of overseas Stored Value Facilities in the UAE.
- Operators of limited network, loyalty, reward, and bonus point schemes may be required to apply to CBUAE for exemption from the licensing requirement.
- Ambiguity remains regarding the ability of financial institutions licensed in the Financial Free Zones to obtain an onshore SVF Licence.
- Previous uncertainty regarding the permissibility of crypto-assets in the UAE appears to have been resolved, with Stored Value Facilities involving crypto-assets being expressly subject to the SVF Regulation.
- Firms holding an SVF licence granted under the SVEPS Regulation are permitted to continue to operate, but must ensure compliance with the requirements of the SVF Regulation within one year.

Background

On 3 November 2020 the Central Bank of the United Arab Emirates (CBUAE) announced the issue of a new Stored Value Facilities Regulation (Circular No. 6/2020) (the SVF Regulation) that applies to all persons issuing or operating Stored Value Facilities (SVF) in the UAE. The SVF Regulation repeals and replaces the Regulatory Framework for Stored Value and Electronic Payment Systems Regulation (the SVEPS Regulation) that took effect in the UAE in 2017. The new regulations seek to update the regulatory framework governing digital payments in the UAE in order to take account of technological advancements and the rapid development of stored value products and services.

Key changes

Single licence type

The SVF Regulation replaces the previous framework under the SVEPS Regulation (which had been based on multiple different Digital Payment Services and four distinct categories of payment service provider) with a single definition of SVF and a single licence type.

Provisions relating to the designation and oversight of payment systems (including retail payment systems) previously contained in the SVEPS Regulation are also omitted from the SVF Regulation. These provisions now appear in the financial infrastructure part of the Decretal Federal Law No. (14) of 2018 Regarding the Central Bank & Organization of Financial Institutions and Activities (the Central Bank Law).

- Under the SVF Regulation, an SVF is defined broadly. The definition captures any non-cash facility whereby a person pays, directly or indirectly, a sum of money or “Money’s Worth” (which is defined as including values, reward points, Crypto-Assets, or Virtual Assets) to the issuer in exchange for storage of the value of that money or Money’s Worth, whether in whole or in part, and the issuer undertakes that upon the use of the facility by the person as a means for payment for goods and services (which may be or include money or Money’s Worth) or payment to another person, the issuer, or a third party that the issuer has procured to do so, will: (i) supply the goods or services; (ii) make payment for the goods or services; or (iii) make payment to the other person, or as the case requires.

The SVF definition captures both “Device-based Stored Value Facilities” (SVFs which have the value stored in an electronic chip on a card or physical device, such as pre-paid cards, watches, and ornaments) and “Non-device Based Stored Value Facilities” (SVFs which have the value stored on a network-based account and can be accessed through the internet, a computer network, or mobile network, such as internet-based payment platforms or mobile e-wallets).

A single licence type, an “SVF Licence”, must be obtained by any person who wishes to issue or operate an SVF in the UAE, unless an exemption applies.

Exemptions

Unlike the SVEPS Regulation, there is only one automatically applicable exemption under the SVF Regulation for “Single-purpose Stored Value Facilities” — these are defined as SVFs in respect of which the issuer gives an undertaking that if the facility is used as a means of making payments for goods or services (not being money or Money’s Worth) provided by the issuer, the issuer will provide the goods or services under the rules of the facility.

Otherwise, CBUAE is granted discretion to exempt SVFs upon application by an issuer based on the risk the SVF poses to customers, customer funds, and the UAE financial system. The SVF regulation lists the following five categories of SVF that CBUAE may exempt from the licensing requirement:

- SVFs used for certain cash reward schemes such as loyalty schemes provided by shops and supermarkets which offer cash rewards for customer loyalty.
- SVFs used for purchasing certain digital products, where: (i) the facility may only be used as a means of making payments for goods or services that are delivered to, and are to be used through, a telecommunication, digital or technology device; (ii) the payments are executed through such a device; and (iii) the telecommunication, digital or technology operator acts as an intermediary

between the user of the SVF and the provider of the goods or services. Examples include SVFs exclusively for the purchase of digital content including ringtones, music, videos, electronic books, games, and applications that can be used on smartphones, computers, or other devices.

- SVFs used for certain bonus point schemes such as airline mileage programs and customer loyalty schemes that provide non-cash points to customers to reward their patronage and where those points and value stored is not cash-redeemable.
- SVFs that can only be used within a limited group of goods or service providers — i.e., SVFs that may be used as a means of making payments only for goods or services provided by the issuer or a person who provides the goods or services under an agreement with the issuer.
- SVFs in respect of which: (i) the aggregate amount of customer funds/money/Money's Worth held by the issuer does not exceed half a million Dirham (AED500,000) or its equivalent; and (ii) the aggregate number of customers is not more than 100. Note that only issuers who participate in the CBUAE FinTech regulatory sandbox may apply for this exemption.

CBUAE is also granted the power to request any information from an exempted SVF issuer that it considers necessary to determine the issuer's eligibility for exemption, both upon application for exemption and on an ongoing basis thereafter. CBUAE may declare an SVF not exempt from the licensing requirement and require the issuer of the SVF to apply for an SVF Licence.

Given the breadth of the SVF definition and the lack of automatically applicable exemptions for SVF schemes other than those falling within the definition of a Single-purpose Stored Value Facility, operators of limited network schemes, loyalty schemes, reward schemes, and bonus point schemes may need to consider whether they are required to apply to CBUAE for an exemption from the licensing requirement.

Commercial banks licensed in the UAE are deemed to be authorised to provide SVFs, but must notify CBUAE and be issued a no objection letter prior to commencing SVF activity. Commercial banks must also comply with a number of the ongoing requirements under the SVF Regulation when providing SVF services.

Detailed licensing process

Unlike the SVEPS Regulations, which deferred the details of the licensing process to a CBUAE licensing manual, the SVF Regulations set out in detail the requirements for obtaining a licence, as follows:

- Applicants must obtain an application form from the Licensing Division of CBUAE. The SVF Regulation provides that the senior management of the applicant is "strongly encouraged" to meet with CBUAE and discuss the applicant's business plan prior to submitting an application. Further face-to-face meetings with senior management may also be conducted as part of the application process.
- The completed application form must be submitted to CBUAE along with the required supporting documents set out in the Annex to the SVF Regulation (reproduced in the Annex to this *Client Alert*). These required documents include a report that must be prepared on behalf of the applicant by an independent assessor evidencing the applicant's compliance with the SVF Regulation's detailed requirements. The independent assessor cannot be involved in the operations to be reviewed or in selecting or implementing the relevant control measures to be reviewed.

- CBUAE will inform the applicant in writing once the application is considered complete and processing of the application will begin. The SVF Regulation includes no statutory timeframe for determining a completed application, and CBUAE may request further information whereupon application will be deemed suspended until the requested information is provided. If an application is suspended for six months or more for any reason, a new application will generally be required.
- CBUAE may grant an SVF Licence with or without conditions. Conditions attached to a licence may include, among others, additional capital requirements, business restrictions on the licensee, requirements relating to safeguarding of customer funds, and restrictions as to the maximum amount of value that may be stored on an SVF.

Firms already holding an SVF Licence under the SVEPS Regulation benefit from a grandfathering provision under which they have one year from the date the SVF Regulation comes into force to ensure compliance with its requirements (which firms must demonstrate by submitting an independent assessment report to CBUAE before the end of the transitional period).

Prohibition on overseas SVF schemes

In addition to prohibiting persons who do not hold an SVF Licence from issuing or operating SVFs in the UAE, the SVF Regulation includes an express prohibition on such persons publishing (whether or not inside the UAE) invitations or solicitations of the public in the UAE relating to the issue of SVFs. Since an SVF Licence may only be obtained by an applicant that is a company incorporated in the UAE, this effectively means that overseas SVF schemes may not be operated or marketed in the UAE.

The SVF Regulation sets out a number of non-exhaustive “relevant factors to be considered” that CBUAE will take into account in determining whether or not an overseas SVF is issued in the UAE, or if a person is deemed to have published an invitation or solicitation of the public in the UAE relating to an SVF. These factors include:

- Whether or not the location for the delivery of the SVF and the provision of subsequent customer services to users is in the UAE.
- Whether or not the location for and the means of loading the SVF is through channels in the UAE (e.g., UAE licensed banks).
- Whether or not promotional material is targeted — via “push” techniques — at group of people that the issuer knows, or should reasonably know, reside in the UAE (push techniques include, for example, directing information to a particular person or group of people through e-mails, SMS messages, or social media channels).
- Whether or not any news group, bulletin board, chat room, or similar facility has been used to promote the SVF scheme in the UAE.
- In the case of product information or promotional material hosted on a website, whether or not the website’s existence has been included in a UAE search engine or the UAE section of a search engine (or has been advertised in the UAE via any other means such as print or broadcast media), and whether or not relevant promotional materials, in print or online forms, are easily accessible in the UAE.

- Whether or not representations made in promotional materials and advertisements regarding the location of the issue of the SVF suggest this takes place in the UAE.
- Whether or not the issuer's website and its functions are designed in a manner that may imply or give the impression that the SVF is issued in the UAE, such as the languages used in the SVF website (e.g., Arabic), the use of particular domain name (e.g., a UAE domain name), the currencies accepted for the services (e.g., AED), or contact details in the UAE.

In addition, CBUAE will take into account:

- Whether or not reasonable precautions are in place to avoid promotional materials being made available or accessible to persons in the UAE.
- Whether or not the issuer has systems in place to avoid relevant services being provided to persons residing in the UAE.
- Whether or not the issuer has established a physical presence in the UAE.
- Whether or not the issuer has established business relationships with banks or financial institutions in the UAE for payment or other banking support services in the UAE.

Ambiguity regarding financial institutions licensed in the Financial Free Zones

The SVF Regulation introduces ambiguity in relation to financial institutions licensed in the UAE Financial Free Zones.

On the one hand, the introduction to the regulation states: "Financial institutions regulated by Financial Free Zone Authorities may conduct SVF business in the State after obtaining a License from the Central Bank." However, Article (3)2 of the regulation requires that an applicant for a licence must be "a company incorporated in [UAE], including free zones but excluding Financial Free Zones." Furthermore, the regulation requires that the chief executive and alternate chief executive of a licensee "should be individuals who are ordinarily resident in the [UAE excluding Financial Free Zones]" and that the senior management team and key personnel responsible for "scheme operation, system support, risk management and compliance ... must be based in the [UAE excluding the Financial Free Zones]". Notably, however, CBUAE is empowered to consent to alternative arrangements in this regard depending on the nature, scale, and complexity of the relevant business.

Crypto-assets

Previous uncertainty regarding the permissibility of crypto-assets in the UAE appears to have been resolved. The prohibitive language relating to crypto-assets contained in the SVEPS Regulation has not been replicated in the SVF Regulation, and crypto-assets are expressly included in the definition of SVF as a form of value that may be stored by a user.

How the jurisdiction of CBUAE will interact with that of the UAE Securities and Commodities Authority (UAE SCA) under the expected UAE SCA Regulation for Issuing and Offering Crypto-Assets (SCA Crypto Regulation) remains to be seen. Based on the draft provisions of the SCA Crypto Regulation, it appears that SVF involving crypto-assets and activities related to them (such as fiat/crypto exchange related to the operation of an SVF) will be regulated exclusively by CBUAE under the SVF Regulation. However, the final text of the SCA Crypto Regulation is awaited and it remains to be seen how, in practice, the

regulators will approach their respective responsibilities in relation to oversight of crypto-asset business in the UAE.

Enhanced regulatory regime

The SVF Regulation enhances the regulatory regime applicable to SVF Licence holders. Existing organisational and conduct of business requirements applicable to licensees are largely retained and expanded on or enhanced, and new detailed requirements are introduced in some areas (particularly in relation to technology risk management, including customer authentication and information security). The requirements applicable to licensees are discussed in further detail below.

CBUAE is also granted enhanced supervisory powers under the SVF Regulation, such as the ability to appoint a skilled person to advise or oversee the operations of a licensee in certain circumstances.

Overview of the new SVF Regulation

Under the SVF Regulation, CBUAE has the authority to: (i) decide whether to grant an SVF Licence (or exemption); (ii) conduct ongoing supervision of licensees; and (iii) conduct examination and impose sanctions and other enforcement measures on licensees as required.

Requirements for SVF Licence holders

Licensees must implement measures to ensure they meet the following requirements (which do not apply to licensed banks that carry out SVF business in the UAE):

- **Principal business and financial resources requirements:** A licensee's principal business must be the issue of SVF. Licensees wishing to conduct secondary or ancillary businesses must seek prior approval from CBUAE. The SVF Regulation also stipulates minimum capital requirements for licensees of, in summary: (i) paid-up capital of at least 15 million Dirham (AED15 million) or an equivalent amount in any other currency approved by the Central Bank; and (ii) eligible capital equal to at least 5% of the total customer funds held by the licensee. CBUAE may impose additional capital requirements based on the scale and complexity of a licensee's business.
- **Corporate governance requirements:** A licensee must demonstrate that it has appropriate policies and procedures to ensure effective decision-making and proper risk management, commensurate with the scale and complexity of its business. Specific requirements on licensees in this regard include:
 - Having a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, and documented decision-making procedures, reporting lines, internal reporting, and communication processes.
 - Implementing a code of conduct for management and employees.
 - Ensuring adequate accountability for senior management.
 - Obtaining prior CBUAE approval (and demonstrating the fitness and propriety) of directors and controlling shareholders.
 - Conducting appropriate due diligence and obtaining CBUAE approval before outsourcing activities and processes to service providers (including intragroup arrangements). Outsourcings must be governed by a written agreement containing prescribed terms.

- **Information and accounting systems:** A licensee must implement robust information and accounting systems to: (i) record all business activities in a timely and accurate manner; (ii) provide quality management information to enable effective and efficient management of business and operations; and (iii) maintain an appropriate audit trail to demonstrate the effectiveness of controls. The licensee must also have in place adequate data protection policies, measures, and procedures to protect its information (particularly customer data) from unauthorised access, retrieval, tampering, and misuse. In particular, a licensee must store all customer data (including customer identification and transaction records) in the UAE for a minimum of five years.

The remaining requirements also apply (either wholly or partially) to licensed banks that carry out SVF business in the UAE:

- **General risk management and internal control systems:** A licensee must establish effective internal processes for managing liquidity risk, and should have robust internal controls and auditing systems to: promote effective and efficient operations; provide reliable financial and management information; enable prevention or early detection of irregularities, fraud and errors; safeguard assets; and ensure statutory and regulatory compliance. A licensee is also required to maintain effective and separate compliance and internal audit functions, and comply with incident and breach reporting requirements.
- **Management and safeguarding of customer funds:** A licensee must have in place an effective and robust system to protect and manage the “Float” (i.e., the aggregate customer funds in the form of money or Money’s Worth added to an SVF held by the licensee) to ensure that: (i) all funds are deployed for the prescribed use only; (ii) funds belonging to customers are protected against claims by other creditors of the licensee in all circumstances; and (iii) funds are protected from operational and other relevant risks. In particular:
 - A licensee must segregate customer funds from its own funds and safeguard them using either: (i) one or more segregated accounts with licensed banks (which may include foreign banks recognised by CBUAE) that benefit from effective contractual arrangements ensuring the legal right and priority claim of customers to the Float in the event of insolvency of a licensee; or (ii) an effective bank guarantee and/or insurance contract that provides substantially the same protection for customers.
 - A licensee must ensure that there are sufficient funds: (i) for the redemption of the Float to all customers at all times; and (ii) to pay for the costs of distributing the Float to all customers should this be required.
 - Daily reconciliations must be carried out between outstanding customer balances and the amount of the Float.
 - A licensee that proposes to hold a proportion of the Float in low risk financial assets other than cash or bank deposits must obtain prior written consent from CBUAE which will require evidence that the Float will be adequately protected from all relevant risks, including investment risk, market risk, concentration risk, and liquidity risk.
 - Unless expressly approved by CBUAE, a mismatch between the currency denomination of the Float and that of the assets in which the Float are held is not permitted (save for a mismatch between AED and US dollar positions).

Note that only certain of the safeguarding requirements apply to licensed banks when carrying out SVF business in the UAE.

- **Technology and specific risk management:** The SVF Regulation sets out a detailed, prescriptive list of requirements regarding technology and risk management. Specifically, CBUAE expects licensees to take into account international best practices and standards when designing and implementing technology systems, and to keep pace with relevant cyber developments. A licensee must also establish, among other measures, the following:
 - An effective technology and cyber security risk management framework.
 - An incident management framework to manage, report, and deal with significant technology-related incidents.
 - An IT governance framework, a set of IT control policies, and a risk management system that match the licensee's business model and risk profile.
 - Appropriate cyber-resilience measures, including penetration, cyber-attack simulation, and vulnerability testing procedures.
 - Specific procedures implementing prescribed requirements relating to the security and integrity of information at rest and in transit, information retention and disposal, information minimisation, and protection of sensitive payment data.
 - Transaction monitoring mechanisms designed to prevent, detect, and block fraudulent payment transactions.
 - Reliable and effective authentication techniques to validate the identity and authority of the licensee's customers. Two-factor authentication is normally expected for high-risk transactions.
 - A business continuity management plan complete with recovery strategies.
- **Business conduct and customer protection:** SVF schemes must be operated prudently and with competence in a manner that does not adversely affect the interests of customers. As part of this requirement, licensees must ensure the following:
 - All promotional materials it issues are accurate and not misleading.
 - Terms and conditions relating to an SVF must contain certain prescribed terms (e.g., that the amount of funds received by a licensee or its agent from a customer will be credited to the account of the customer and made available for use by the customer in a timely manner; that the customer will not be responsible for any direct loss suffered by the customer as a result of unauthorised transactions conducted through the customer's account; etc.)
 - A reasonable limit, supported by business justifications and control measures, must be set for the maximum amount that can be stored in each type of customer account under an SVF scheme.
 - Key features, risks, terms and conditions, and applicable fees, charges, and commissions of the licensee's schemes, facilities, services, and products are effectively communicated and explained clearly to customers.

- Customers are provided easy-to-understand advice on security precautionary measures.
 - SVF systems are interoperable with other major payment systems in the UAE.
 - Adequate staff training is conducted in relation to the regulatory requirements applicable to the licensee and its business.
 - The licensee maintains viable plans for an orderly exit of its business.
- **Anti-money laundering and countering terrorism financing (AML/CFT):** Licensees must comply with existing legal obligations and regulatory requirements for AML/CFT and have in place suitable compliance management arrangements.

Enforcement and compliance

The SVF Regulation grants CBUAE the authority to suspend, withdraw, or revoke an SVF Licence. CBUAE may also take all measures and actions necessary to achieve its objectives including, in a case in which it has found a material violation, to: (i) require rectification; (ii) appoint a specialised expert to guide or oversee the licensee's operations for a specified period; (iii) appoint a manager to run the business of the licensee. It may also take other enforcement actions, including imposing administrative and financial penalties it deems appropriate (such as monetary fines or barring individuals from the UAE financial sector).

Conclusion

The SVF Regulation constitutes an overhaul of the digital payments regulatory framework in the UAE. In repealing the SVEPS Regulation, the SVF Regulation streamlines the applicable regulatory framework relating to digital payments and provides greater clarity as to the licensing process for digital payments businesses. The regulation also provides helpful guidance relating to overseas digital payments businesses, although ambiguity remains in relation to the ability of financial institutions licensed in the Financial Free Zones. Previous uncertainty relating to the permissibility of crypto-assets in the UAE also appears to have been resolved, which may pave the way for new business models.

The enhanced detailed organisational and conduct of business requirements for SVF Licence holders contained in the regulation bolsters CBUAE's ability to exercise effective regulatory oversight in relation to digital payments business, and brings the UAE regulatory framework applicable to digital payments business into line with international standards in this area.

Annex

List of documents to be submitted in an application for an SVF Licence

1. Completed application form for License
2. A report on paid-up capital certified by external auditor
3. A copy of the ownership structure
4. The latest audited financial statements for each Controlling Shareholder
5. Completed application form(s) for each Controlling Shareholder
6. Outline of the Senior Management and staff structure
7. Completed application forms for chief executive, alternate chief executive and director
8. Independent assessment report(s) on seven areas as set out in paragraph 5 of Article (3).
9. Copies of risk management policies and procedures on AML/CFT systems
10. Copies of policies and procedures for managing the Float
11. A copy of the investment policy for managing the investment of Float
12. A copy of contract, and terms & conditions between the Applicant and the Customer
13. A copy of Operating Rules for the SVF scheme
14. A copy of contractual agreements which describe the rights and obligations of the related parties involved in the SVF scheme
15. Business plan that covers a three year time horizon
16. Board of director's resolution in support of the Application
17. A copy of the articles of association (or equivalent) of the Applicant company in English and Arabic
18. A copy of the Applicant's audited annual reports and / or audited financial statements for the past three financial years immediately prior to application.
19. Each of the following:
 - a) A copy of the notarized Memorandum and Articles of Association
 - b) A copy of the Licensee Commercial License
 - c) Auditors certification that the paid-up capital has been injected into the business"

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