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REGULATION OF CRYPTO ASSET ACTIVITIES IN ABU DHABI

A. Basic information

The Financial Services Regulatory Authority (“FSRA”) issued on 25th June 2018 a guidance to the regulation of crypto asset activities in Abu Dhabi Global Market (“ADGM”). It should be read in conjunction with the Financial Services and Markets Regulations 2015 (“FSMR”), the relevant Rulebooks of the FSRA and the FSRA’s Guidance & Policies Manual and its ‘Guidance – Regulation of Initial Coin/Token Offerings (ICOs) and Crypto Assets under the FSMR (“ICO Guidance”). The guidance sets out the FSRA’s approach to the regulation of crypto asset activities in ADGM, including activities conducted by crypto asset exchanges, crypto asset custodians and, as applicable, intermediaries engaged in crypto asset activities and is, together with the applicable ADGM regulations and FSRA rules governing the crypto asset activities, collectively referred to as the Spot Crypto Asset Framework (“Framework”). The Framework is not intended to apply to initial token or coin offerings (ICOs) or other capital raising purposes.

The guidance is applicable to

1. Applicants for a Financial Services Permission (“FSP”) to carry on the regulated activity of Operating a Crypto Asset Business (“OCAB”) in or from the ADGM;
2. Authorised Persons in respect of carrying on the regulated activity of Operating a Crypto Asset Business in or from ADGM;
3. Recognised investment exchanges with a stipulation on its recognition order permitting it to carry on the regulated activity of Operating a Crypto Asset Business within ADGM.

B. Objectives of the Framework

The crypto asset system enables their users to create, store and transfer crypto assets without a third party needed. Hence, the FSRA’s approach is to control this system and mitigate financial crime and other business-related risks. The objectives of the Framework are to address these risks and issues by regulating crypto asset activities and highlight mandatory requirements to carry out the regulated activity with the aim to promote transparency and technology governance. Regarded as the main risk-related areas under the framework are AML/CFT, consumer protection, technology governance, market abuse, exchange-type activities and custody.

The Framework treats crypto assets as commodities and, therefore, they are not deemed specified investments or financial instruments under the FSMR. For the purposes of the Framework, the FSRA has defined crypto assets as follows:

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“Crypto Asset” means a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value but does not have legal tender status in any jurisdiction. A Crypto Asset is (a) neither issued nor guaranteed by any jurisdiction and fulfils the above functions only by agreement within the community of users of the Crypto Asset, and (b) distinguished from fiat currency and e-money.

1. Regulated Activity of Operating a Crypto Asset Business

To be authorised to carry on the regulated activity of OCAB an applicant has to comply with all rules applicable and will then be granted with a Financial Services Permission (“FSP”).

Operating a Crypto Asset Business (“OCAB”) includes

- a) buying, selling or exercising any right in Accepted Crypto Assets;
- b) managing Accepted Crypto Assets belonging to another person;
- c) making arrangements with a view to another person buying, selling or providing custody of Accepted Crypto Assets;
- d) marketing of Accepted Crypto Assets;
- e) advising on the merits of buying or selling of Accepted Crypto Assets or any rights conferred by such buying or selling; and
- f) operating (1) a crypto asset exchange or (2) as a crypto asset custodian.

Exclusions:

The following activities do not constitute OCAB and therefore are not subject to the framework: (1) the creation or administration of Crypto Assets; (2) the development, dissemination or use of software for the purpose of creating or mining a Crypto Asset; (3) the transmission of Crypto Assets; (4) a loyalty points scheme denominated in Crypto Assets; or (5) any other activity or arrangement that is deemed by the regulator to not constitute OCAB, where necessary and appropriate in order for the regulator to pursue its objectives.

2. Regulatory requirements for OCAB

It is stipulated that only “Accepted Crypto Assets” will be granted a FSP. The FSRA has the power to determine each Accepted Crypto Asset that will be permitted in relation to OCAB. Regarding what is deemed to be an Accepted Crypto Asset, the FSRA considers a bundle of characteristics such as market capitalization, security, traceability/monitoring, exchange connectivity, market demand/volatility, type of distributed ledger, innovation/efficiency and practical application/functionality.

Further, the applicant is required to have capital in fiat form not less than the equivalent to 6 months of operational expenses, for crypto asset exchanges even 12 months. Of course, also an AML/CTF framework shall be in place.

The global reach of digital assets increases the risk of ML/TF. Hence, the FSRA requires that its AML rules apply for all OCAB holders and it expects to have a fully compliant on-boarding process. Further, it needs to be ensured that all technological features assisting the mitigation of ML/TF risks will not lead to a simplified process where requirements are not properly undertaken.

en. OCAB holders shall further develop a crypto asset compliance policy as well as a monitoring program for the same.

Moreover, OCAB Holders are required to have processes in place that enable them to disclose all material risks to their clients in a manner that is clear, fair and not misleading, prior to entering into an initial transaction.

3. Crypto Asset Exchange

Crypto asset exchanges are regarded as a key crypto asset activity. Hence, the Framework contains specific additional requirements applicable to crypto asset exchanges.

Crypto asset exchange means the trading, conversion or exchange of

- (a) fiat currency or other value into Accepted Crypto Assets;
- (b) Accepted Crypto Assets into fiat currency or other value; or
- (c) one Accepted Crypto Asset into another Accepted Crypto Asset

FSRAs approach is to treat crypto asset exchanges similarly to multilateral trading facilities. FSRA considers that a crypto asset exchange cannot be undertaken by entities without substantial resources, including a substantial commercial, governance, compliance, technical, IT and HR presence within ADGM.

4. Crypto Asset Custodian

Crypto asset custodians are also regarded as a key crypto asset activity, which is subject to specific additional requirements applicable.

Crypto asset custodian involves (a) safeguarding, storing, holding or maintaining custody of Accepted Crypto Assets belonging to another person; or (b) controlling or administering Accepted Crypto Assets for the purpose of the aforementioned.

FSRA distinguishes between 3 types of custodies (fully custody, custody outsourced to a third party, self-custody), of which operating with a self-custody wallet is not regarded as carrying on the regulated activity of a crypto asset custodian.

Applicants who want to carry on the crypto asset activity of a crypto asset custodian must ensure that they properly protect and safeguard any client money and client investments that they are holding or controlling, providing custody for, or arranging custody for, on behalf of their clients.

5. Fees

Applicants for the regulated activity of OCAB have to pay an initial authorization fee of

1. 20.000 USD;
2. 250.000 USD, if the applicant wants to operate a crypto asset exchange.

Further an annual supervision fee is set out of

1. 15.000 USD;
2. 60.000 USD, if the applicant wants to operate a crypto asset exchange.

In addition, if the applicant wants to operate a crypto asset exchange a trading levy of 0.0006 – 0.0015 % depending on the average daily value applies and is payable monthly in USD to FSRA.

C. Conclusion

Correctly, the regulatory authorities want to ensure that customers are properly protected but have to be thoughtful that they do not deter crypto business by “overregulating”. While regulations are in general welcomed, they should not be designed in a way to make this new business significantly complicated. Otherwise this aspiring business is not going to attract new crypto business. A more business friendly approach would be preferable. For instance, countries like Gibraltar and Malta, who also set up new crypto regulations for allowing crypto exchanges and other crypto companies to settle there on a legal basis, have created an authority that will provide legal certainty for the use of blockchain and cryptocurrencies. The regulatory authorities in these countries are ready to react to business expectations and are more business friendly, because they have simply a more technological and business orientated approach. It remains to be seen, if the new regulations are really attracting new business or whether it is the contrary.

For any specific question, further clarification required and legal advices on how to implement cryptocurrencies and/or blockchain to your own business, please contact:

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