

CRYPTOCURRENCY IN THE UAE: APPROACHES IN THE DIFC AND ADGM

Authored by: Zara McGlone, *Barrister, 4 Stone Buildings*

In recent years, the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) have played an integral role in cementing the UAE as a global business hub. It is thus perhaps no surprise that both of these offshore jurisdictions, have been at the forefront of digital asset regulation and other legal developments.

In the DIFC, the Dubai Financial Services Authority (DFSA) has approached the matter in three stages. The first of these stages began in March 2021, when the DFSA published a consultation paper on the regulation of investment tokens. Following that consultation paper, in October 2021, the DFSA implemented its investment token regime, which applies to tokens which meet the conditions of the definition set out at GEN A2.1.2 of the DFSA Rulebook.

The second stage in the DFSA's framework began in March 2022, when the DFSA published a second consultation paper, this time on the regulation of crypto tokens. Following this, in November 2022 the DFSA implemented its crypto token regime, which is set out at GEN 3A of the DFSA Rulebook, with definitions relating to crypto tokens set out at GEN A2.5. When the regime was announced in November 2022, the DFSA designated Bitcoin (BTC), Ethereum (ETH), and Litecoin (LTC) as recognised crypto tokens. In November 2023, the DFSA added Ripple (XRP) and Toncoin (TON) to that list, meaning that those cryptocurrencies are now also approved for use within the DIFC.

The third and final stage started in October 2023, when the DFSA published a third consultation paper, on the regulation of digital assets. The results of this consultation, and the DFSA's response to those results, are likely to be announced at some point in 2024.

While the DIFC has been particularly engaged with developments in the world of cryptocurrencies, the ADGM has also been at the forefront of digital asset regulation in the region, and lays claim to being the first jurisdiction in the world to introduce a framework for virtual asset activities, having done so in 2018.



That framework is managed by the ADGM's Financial Services Regulatory Authority (FRSA). In September 2022, the FRSA issued guidance on the application of the ADGM's virtual asset framework. That guidance sets out six core principles aimed at achieving what the FRSA describes as "the appropriate balance between confidence in our ecosystem, risk-sensitivity, customer protection and attracting new entrants". These principles are not legally binding, but they are designed to complement the framework, and represent a statement of intent by the FRSA of its vision for the regulation and supervision of virtual asset activity in the ADGM.

The ADGM's approach is different from that taken by the DIFC, since it largely extends the ADGM's regulatory framework for traditional financial products to include digital assets, rather than developing new standalone regulation. This has various practical implications – in some areas the ADGM approach appears to be stricter than that of the DIFC, while in others the opposite appears to be the case.

Returning to the DIFC, the DIFC Courts are also playing a significant role, with the establishment in 2021 of the DIFC's Digital Economy Court (DEC), which is the world's first international digital economy court, and has a very wide remit. Proceedings in that court are governed by Part 58 of the DIFC Court Rules.

One case which might have been issued in the DEC had it been established sooner is that of **(1) Gate MENA DMCC (2) Huobi MENA FZC v (1) Tabarak Investment Capital Limited (2) Christian Thurner (2020) DIFC TDD 001 (the 'Gate MENA' case).**

The case arose from a dispute between a company registered in the Dubai Multi Commodities Centre (DMCC) and licensed by the DMCC to carry out OTC transactions in cryptocurrencies, principally in Bitcoin, and a DIFC-registered company authorised by the DFSA to provide a range of financial services (including advising on financial products and arranging investments, credit and custody).

The defendant company assisted the claimant in the sale of 300 BTC, but during the course of the sale, a crypto-fraud was committed. Accordingly, the claimant brought claims against the defendant company and its director of investments for breaches of contractual, tortious, and statutory duties.

The Court found that there was no binding contract between the parties, nor was there any tortious duty of care on the facts of the case. In reaching these conclusions, the Court found that BTC is property, and set out a detailed consideration of circumstances in which a third party which is involved in the sale and purchase of a digital asset might owe civil law duties. The Court's finding that BTC is property is particularly significant, since it suggests that cryptocurrencies more generally will be considered property. This in turn means that parties in cryptocurrency-related disputes may (certainly in theory) seek to obtain any interim or substantive relief which might be available in respect of other property. This in turn means that parties in cryptocurrency-related disputes may (certainly in theory) seek to obtain any interim or substantive relief which might be available in respect of other property.

The Gate MENA case is particularly significant as one of the first cryptocurrency disputes in the region, and one of the few reported cases anywhere in the world to address issues such as the safe transfer of cryptocurrency and the obligations owed by a custodian of cryptocurrency. Consequently, there will no doubt be significant global interest in the result of the appeal, which is due to be heard in January 2024.



Zara McGlone, Barrister, **4 Stone Buildings**

