

THE NEW UAE BANKING LAW – WHAT IT MEANS FOR YOU

As noted in our earlier briefing¹, Federal Law No. 14 of 2018 on the Central Bank and Organisation of Financial Institutions and Activities (the "**New UAE Banking Law**") came into force in the United Arab Emirates (the "**UAE**") on 30 September 2018.

The New UAE Banking Law repeals two of the UAE's older banking laws. The first of these is Federal Law No. 10 of 1980 concerning the status of the Central Bank of the UAE (the "**UAECB**") and its roles managing the currency and supervising the activities of banks and finance companies (the "**1980 Banking Law**"). The second of these is Federal Law No. 6 of 1986 in relation to Islamic banking activities. Whilst this is a fundamental re-writing of the statutory scheme for banking in the UAE, the powers conferred upon the UAECB by the New UAE Banking Law are being used to maintain existing UAECB regulations and circulars, promulgated under the previous banking laws, until such time as they are replaced in the three year period ending 29 September 2021.

It is reasonable to assume that the UAECB will update existing regulations and circulars in the three years following enactment of the New UAE Banking Law. In addition, we anticipate the UAECB publishing new regulations and circulars to address areas of banking that did not exist when the 1980 Banking Law was enacted. The New UAE Banking Law contains a framework which more accurately accommodates the scope and depth of banking sector activities taking place in and from the UAE today, and supports the UAE's trajectory towards becoming one of the world's leading financial hubs.

This briefing sets out some of the key developments contained in the New UAE Banking Law.

1. The new statutory scheme of Central Bank Licensed Financial Activities in the UAE

Article 65(1) of the New UAE Banking Law sets out a list of Licensed Financial Activities for which a licence is required from the UAECB. The list of Licensed Financial Activities demonstrates recognition by the UAE Government of changes over the last 30 years in banking and related financial services that go considerably beyond the emphasis on "commercial banking" in the two repealed banking laws, including:

Key issues

- Licensed Financial Activities regime which covers a greater scope of activities relevant to modern financial services activities, with exemptions to financial promotions subject to implementing regulations
- Framework for recovery and resolution of Licensed Financial Institutions
- Recognition of Financial Infrastructure Systems and settlement finality
- Codified standards for customer protection
- Central Bank-administered rulebook providing greater public transparency for banking laws, regulations and circulars.

¹ Link to our November 2018 briefing: [The New UAE Banking Law and its impact on Islamic financing in the UAE](#)

- the provision of virtual banking services
- the provision of stored value services, electronic retail payments and digital money services
- arranging and/or marketing of "Licensed Financial Activities"
- acting as a principal in financial products that affect the financial position of the "Licensed Financial Institution", including foreign exchange, derivatives, bonds, sukuk, equities, commodities and other financial products.

The scope of some Licensed Financial Activities may overlap with some areas which are within the jurisdiction of the Emirates Securities and Commodities Authority (the "**SCA**"). Market participants will be looking for a coordinated approach between the UAECB and the SCA to avoid duplication of regulation.

The New UAE Banking Law contemplates the publication of further directions in relation to Licensed Financial Activities. A more transparent rulebook could provide definitive clarifications for a number of perennial questions regarding the territorial scope of the UAECB's oversight of its licensees. For non-licensees of the UAECB it would be helpful to have clear boundary lines as to what must be licensed and what activities do not require a licence. We expect the scope of Licensed Financial Activities will continue to evolve over the coming years as the UAECB considers its policy for new and innovative business propositions.

Whilst a new function, we expect virtual banking to cover the online services of existing UAE licensed banks as an additional permitted activity on top of, rather than instead of, a deposit taking license. However, it may be that the UAECB will accept applications for a virtual banking licence from non-banks, supporting the global shift towards online and market place banking services. We do not expect that this activity is intended to capture non-UAE based services which UAE persons can access online.

The "arranging and/or marketing" activity could be interpreted in a number of ways. Until further guidance is published (see below), this activity could cover the rep office marketing function and also the "arrangement" of transactions, in the traditional sense (being the facilitation of a transaction beyond marketing or acting as a mere conduit for information).²

Arranging has not previously been specifically targeted for regulation by the UAECB and it had been common place for firms to get comfortable that advertising and marketing of UAECB products (i.e. those not covered by the SCA's regime) was permissible. Until clear guidance is provided, such activities should be restricted unless licensed – or the arrangements must not take place in the UAE. A number of other market participants are likely to be affected by this requirement, including emerging crowdfunding platforms (likely to be "arranging" credit) and UAE online marketing platforms facilitating access to banking products, such as deposits and credit cards.

Financial consultation and investment services (other than the "acting as principal" activity noted above) seem to be no longer covered under the New UAE Banking Law (although with some doubt as UAECB Resolution 164/8/94³ has not been specifically annulled). We expect investment consultants, which

² See below regarding the rep offices.

³ Regarding the Regulation for Investment Companies and Banking, Financial and Investment Consultation, as amended.

have recently needed to obtain an SCA license as an investment adviser/manager, should hopefully be able to seek removal from the UAECB register and move over fully to SCA supervision.

We note that future implementing regulations may contain guidance on the scope of and exemptions to the "Licensed Financial Activities". It is hoped that such regulations will contain typical exemptions for activities not carried on in the UAE by way of business and/or intra-group. We expect the scope of Licensed Financial Activities will continue to evolve over the coming years.

Representative offices

On the basis that resolutions that were promulgated under the repealed banking laws will continue to remain in force, it should remain possible for financial institutions to obtain/maintain licences for representative offices under the UAECB's Board of Directors Resolution No. 57/3/1996. We understand the UAECB continues to accept applications for rep office licenses.

2. Financial Promotions under the New UAE Banking Law

Article 64(2) of the New UAE Banking Law may be seen as a statement of intent on addressing the legality of cross-border financial promotions in respect of Licensed Financial Activities that take place "in or from within" the UAE. Article 64(3) permits the UAECB to issue rules in relation to financial promotions. Financial promotion covers any form of communication, made by any means, which is aimed at inviting or offering to enter into any transaction or conclude any agreement related to a Licensed Financial Activity. Article 64(4) empowers the UAECB to specify exemptions from financial promotion obligations.

This new framework for financial promotions gives the UAECB statutory authority to provide further clarity on the treatment of cross-border financial promotion activities, as well as take into account some of the existing regulations on this in the context of the UAE's securities industry – for example, the SCA's 2017 rules on financial promotions which contain an exemption for promotions to "Qualified Investors" (a designation broadly covering professional, regulated and UAE Government investors) and promotions made in response to a documented "reverse solicitation".⁴

3. Establishment of Financial Activities Committee

Article 66 of the New UAE Banking Law provides for the establishment of a Financial Activities Committee (this will require a UAE Cabinet resolution), which will include representatives from the UAECB, the SCA and the Insurance Authority of the UAE.

The Financial Activities Committee will have the power to give opinions on topics related to the regulation of financial activities generally, and is a reassuring move which will enable the "big three" financial services regulators of the UAE to cooperate more consistently across the UAE financial sector as a whole.

Under the New UAE Banking Law (Article 65), the following activities shall be considered "Licensed Financial Activities" subject to UAECB licensing and supervision in the UAE:

- a. Taking deposits of all types, including Shari`ah-compliant deposits.
- b. Providing credit facilities of all types.
- c. Providing funding facilities of all types, including Shari`ah-compliant funding facilities.
- d. Providing currency exchange and money transfer services.
- e. Providing monetary intermediating services.
- f. Providing stored values services, electronic retail payments and digital money services.
- g. Providing virtual banking services.
- h. Arranging and/or marketing for Licensed Financial Activities.
- i. Acting as a principal in financial products that affect the financial position of the Licensed Financial Institution, including but not limited to foreign exchange, financial derivatives, bonds and sukuk, equities, commodities, and any other financial products approved by the UAECB.

⁴ Link to our February 2017 briefing on SCA Decision No. (3/RM) of 2017 concerning the Organisation of Promotion and Introduction: [UAE securities regulator creates regime for promotion and introduction to UAE investors](#)

4. Resolution and Liquidation of deposit-taking Licensed Financial Institutions

In line with current regulatory developments globally and with one of the roles of the Financial Restructuring Committee mandated under the UAE Bankruptcy Law⁵, the New UAE Banking Law recognises the need to develop forms of recovery and resolution regimes for financial institutions, as well as dealing with the insolvency of these institutions differently from those of non-bank corporates or individuals.

Article 116 of the New UAE Banking Law states a set of principles on which a recovery and resolution action or liquidation of a deposit-taking Licensed Financial Institution can take place. However, Article 119 reserves the position for other laws and regulations in force in the UAE to supplement the aims set out in Article 116. We would expect that each of the "big three" financial services regulators will be enacting recovery and resolution regimes for their respective licensees in the near future.

5. Financial Infrastructure Systems and Settlement Finality

A significant development in the New UAE Banking Law which also sets the UAE apart from its neighbouring states is the legislation of settlement finality for Financial Infrastructure Systems ("FMI") which can process or settle transactions that are denominated in UAE Dirham (amongst other currencies).

As background, "settlement finality" is a concept usually associated with financial infrastructure systems ("FMI") such as payment systems, clearing and/or settlement systems for cash and/or securities, whereby the FMI requires certainty that any transfers made to it by a system participant cannot be subject to challenge or clawback if the system participant subsequently becomes insolvent.

Article 132 of the New UAE Banking Law states that:

- any transfer order given by a system participant, including the transfer or disposal of assets pursuant to such transfer order
- the default rules of a Financial Infrastructure System ("FMI"), including close-out of contracts, netting of obligations and realisation against collateral
- any settlements, or realisation of collateral, under the rules of a Financial Infrastructure System ("FMI")

will take precedence in the event that a system participant (or the Financial Infrastructure System ("FMI") itself) is subject to insolvency proceedings or a financial restructuring. As with the UAE Netting Law which was also recently enacted⁶, "*liquidation, insolvency, financial restructuring or bankruptcy*" is widely defined and captures distress proceedings beyond those within the scope of the UAE Bankruptcy Law, owing to the number of UAE persons who fall outside the scope of the UAE Bankruptcy Law regime.

⁵ Link to our April 2018 briefing on the Financial Restructuring Committee: [Financial Restructuring Committee established in the UAE](#)

⁶ Link to our October 2018 briefing on the UAE Netting Law: [UAE enacts Federal level close-out Netting Law for financial contracts](#)

The legal validity of the netting of obligations owed by a system participant and the Financial Infrastructure System is given specific recognition under Article 133 of the New UAE Banking Law.

6. Protection of customers

Article 121 of the New UAE Banking Law envisages the publication by the UAECB of regulations on the protection of customers. It is hoped that a uniform set of standards for the consumer banking sector will bring greater transparency for customers and enhance efficiency of compliance for Licensed Financial Institutions.

Confidentiality of customer information

Although not new to the existing practice of many UAE banks, Article 120 of the New UAE Banking Law specifically codifies rules on confidentiality of customer information. Previously, this issue had only been addressed by some high-level provisions in the UAE Penal Code on secrecy and had resulted in differing interpretations.

We see it as a positive that the New UAE Banking Law clarifies the position for Licensed Financial Institutions as a matter of the UAE's civil and commercial laws.

Article 120 confirms that written permission is needed from customers for Licensed Financial Institutions to share their data with third parties (other than in a small number of cases, such as AML/CFT compliance and institutions establishing their rights in litigation). On a literal reading, Article 120 would also restrict the sharing of customers' information with an international affiliate, bancassurance partner or third-party data storage provider.

However, drawing from other legislative sources and customs, we would expect that Licensed Financial Institutions would continue their current practice of including customer permissions to data sharing in their written standard terms of business. It remains to be seen whether further regulations will be enacted (or guidance published) by the UAECB to restrict the position of "deemed" acceptance of written data disclosure provisions through website policies on an online platform.

Finally, it should be noted that the confidentiality rules in the New UAE Banking Law cover a broad range of information, being "*all data and information related to customers' accounts, deposits... and related transactions.*" However, there are no data localisation requirements in the New UAE Banking Law and we therefore expect that Licensed Financial Institutions should be able to transfer customer information to overseas branches where confidentiality standards can be maintained.

Customer deposits

Again, although not new to the existing practice of many UAE banks, Article 91 of the New UAE Banking Law specifically codifies a form of mandatory reporting of loans or credit facilities made by a deposit-taking Licensed Financial Institution to related persons and confers powers on the UAECB to require a Licensed Financial Institution to de-risk from their exposures to related persons.

Further, Article 122 of the New UAE Banking Law includes a statement of intent by the UAECB, in conjunction with the Ministry of Finance, to issue further regulations on the protection of depositors' rights as well as potentially

to set up a compensation fund for the benefit of depositors of a failed Licensed Financial Institution.

7. New comprehensive electronic rulebook

There are numerous implementing regulations to be published referred to throughout the New UAE Banking Law and Article 105 refers to the UAECB's creation of an electronic rulebook containing all implementing regulations, rules, standards, decisions and circulars that it publishes.

It is hoped that this electronic rulebook will be accessible by all market participants (including legal practitioners and advisers to Licensed Financial Institutions) and will be a milestone in providing the transparency of legislation required to follow international best practice.

8. Examination of Licensed Financial Institutions operating abroad

Finally, it should be noted by UAE firms with branches or entities that are licensed in the UAE's two financial free zones (the Dubai International Financial Centre and the Abu Dhabi Global Market) that Article 108 of the New UAE Banking Law confers powers on the UAECB to undertake examinations of the activities of its Licensed Financial Institutions in these financial free zones and in other jurisdictions in collaboration and coordination with the relevant regulators.

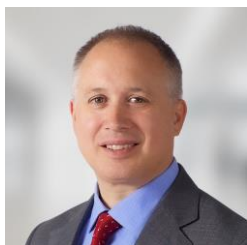
Although to date in the UAE, the UAECB has had limited involvement in activities within the financial free zones, Article 108 may be seen in light of the wider provisions of the New UAE Banking Law which envisages cooperation by the UAECB with foreign regulators (such as providing assistance and exchanging information by the UAECB under Article 28) and matters such as enforcement of UAE-wide anti-money laundering rules (for which there has already been co-operation with the financial zone regulators).

9. Conclusion

The New UAE Banking Law is a timely and significant development which demonstrates recognition by the UAE legislators of the scope and depth of the UAE's financial services sector today, as well as providing a much deeper framework for ongoing progress and greater cooperation with international regulators and supervisory bodies necessary for the UAE to become a fully-fledged financial hub.

Clifford Chance remains close to the regulatory developments in the UAE, having developed close relationships with regulators and advised leading market participants across the region and overseas for over 40 years.

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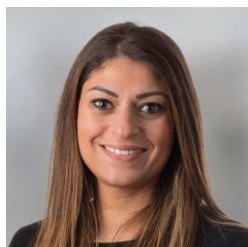
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