Global Financial Services Regulatory Guide - United Arab Emirates

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The UAE has four different regulators responsible for the authorization and supervision of banks, insurers and other financial institutions. These are: (i) the Central Bank of the UAE (CB);); (ii) the Securities and Commodities Authority (SCA); (iii) the Dubai Financial Services Authority (DFSA), which is the regulator of the Dubai International Financial Centre (DIFC); and (iv) the Financial Services Regulatory Authority (FSRA), which is the regulator of the Abu-Dhabi Global Market (ADGM).

There are two regulators in the "on-shore" UAE: (i) The Central Bank of the UAE that regulates banks, finance companies, payment service providers and insurance companies and (ii) the Emirates Securities and Commodities Authorities (ESCA)  that regulates markets, listed companies and securities brokers.

The Central Bank under its new law no. 14 of 2018 has very wide powers to supervise and sanction the FIs within its remit with the ability to censure, fine, sanction and withdraw licenses and to cooperate with foreign regulators.

The ESCA has more limited powers under its law no. 4 of 2002 but is trying to exert more control, including naming and shaming violators of its regulations.

The AML supervisor is the Financial Intelligence Unit (FIU), an independent body hosted at the Central Bank

The allocation of responsibilities between the CB, SCA, DFSA and FSRA is as follows:

The CB and SCA regulate and supervise on a UAE federal level, respectively, all banks, insurers and insurance brokers for the CB while the SCA regulates, securities traders and markets. In 2020 the UAE legislator merged the Insurance Authority (IA) with the CB, and the IA is now fully integrated within the CB

The UAE Council of Ministers has also decided to consider the two UAE exchanges, the Dubai Financial Market (DFM) and the Abu Dhabi Exchange (ADX), as self-regulated organizations under the supervision of the SCA.

The DFSA is the financial regulator and supervisor of all banks, investment firms, securities traders and re-insurers that operate within the DIFC, a financial free zone located in the emirate of Dubai, which is governed by its own rules and regulations largely based on common law principles, as opposed to civil law on the UAE federal level. DFSA-regulated firms include investment firms, asset managers, hedge funds, brokers, financial advisers and insurance intermediaries.

The FSRA is the financial regulator and supervisor of all banks, investment firms, securities traders and re-insurers that operate within the ADGM, a financial free zone located in the emirate of Abu Dhabi, which is governed by its own rules and regulations based on the laws of England and Wales, as opposed to civil law on the UAE federal level. ADGM-regulated firms include investment firms, asset managers, hedge funds, brokers, financial advisers and insurance intermediaries

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

There are two sources of regulatory laws in the UAE, the Central Bank Law no. 14 of 2018 and the ESCA law no. 4 of 2002. The main federal law for banking and financial services is Federal Law No. 14 of 2018 regarding the Central Bank and organization of Financial Institution and Activities, which replaced the old Law No. 10 of 1980 concerning the Central Bank, the Monetary System and Organization of Banking and the insurance industry. The SCA is governed by Federal Law No. 4 for the year 2000 concerning the Emirates Securities and Commodities Authority and Market. The two regulators have issued a number of regulations applicable to the financial institutions that fall under their jurisdictions.

The CB is also supposed to issue a number of updated regulations pursuant to its new law, and it is now issuing a number of these regulations, such as the Stored Value Facility (SVF) and the Retail Payment System (RPS).

With regard to the DIFC, the DFSA issues rules and regulations that apply to the financial institutions that operate within the DIFC. The main laws governing financial institutions in the DIFC are the following:

Regulatory Law 2004

Markets Law 2012

Law Regulating Islamic Financial Business 2004

Trust Law 2005

Collective Investment Law 2010

Investment Trust Law 2006

In addition, the DFSA has published a number of regulations applicable to financial institutions incorporated within the DIFC.

The FSRA issued the Financial Services and Market Regulations, which were broadly modeled after the UKs Financial Services and Markets Act (2000) and other related legislation.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

The CBUAE regulates the below activities:

Taking deposits of all types, including Shari`ah-compliant deposits

Providing credit facilities of all types

Providing funding facilities of all kinds, including Shari`ah-complaint funding facilities

Providing currency exchange and money transfer services

Providing monetary intermediating services

Providing stored values services, electronic retail payments and digital money services

Providing virtual banking services

Arranging and/or marketing for Licensed Financial Activities

Acting as a principle 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 Central Bank

The Central Bank regulates Stored Value Facilities, including crypto currencies and the ESCA regulates crypto-assets.

The regulators in the Financial Free Zones regulate various activities, including the following:

Accepting deposits

Dealing in investments as principal or as agent

Providing credit

Managing assets

Operating collective investment funds

Providing custody and trust services

Acting as a trustee of a fund

Advising on financial products or credit

Insurance intermediation and management

Carrying out payment services

Consumer lending

Providing investment advice

Trading in securities and other investments as principal or as agent

Arranging transactions in investments

Managing profit-sharing investment accounts

Crowdfunding

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Currently, there is no prohibition on foreign banks that deal with clients located in the UAE. The only restriction is the prohibition on holding mortgages on real estate, and such banks would need to have recourse to a local security agent that is a bank or a financial institution licensed by the CB.

A law issued in 2016 creates a secure registry for movable assets, and foreign banks may register as pledgee and hold movable assets as security without needing to have a local security agent.

There are more restrictions on insurers and insurance brokers that are required to be licensed by the CB. Foreign insurance companies may not insure assets located in the UAE.

Similar restrictions apply to the promotion and marketing of foreign funds in the UAE. This must be done through a local agent licensed by the SCA, unless the promotion or marketing is on a reverse solicitation basis or such foreign funds are targeted to Sovereign Wealth Funds or Qualified Investors, provided they are not individuals.

In the DIFC and ADGM , which are wholesale jurisdictions, a foreign entity may only deal through a DFSA-authorized firm unless it is dealing with a market counterparty.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

Each of the four regulators mentioned above have their own specific requirements that must be satisfied by the applicant firm seeking to become authorized. These requirements are also largely dependent on the type of activity the applicant firm is seeking to practice. However, the following general factors will be considered:

Ownership and group structure

Corporate governance structure

Senior management resources

Suitability

Fitness and propriety

There is a moratorium on new banks in the UAE, including branches of foreign banks. As for other FIs, a RBP must be submitted together with a number of key individuals: (i) a CEO, (ii) a compliance officer, (iii) a money laundering reporting officer, (iv) an internal audit officer. This personnel must be fit and proper.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

 Both the CBUAE and ESCA have sandboxes that are for a year and after that, the company may be licensed on a fast track basis or has to wind up. As for licensing, it starts with a meeting with the BSU at the CB to be followed by submitting an RBP and then the appropriate manuals. It takes up to six months to be licensed by the CBUAE. The process at ESCA should take between 2-3 months. In detail, an applicant firm must complete a formal process to obtain authorization from the relevant regulator. As described above, the process for authorization will vary depending on the regulator.

For example, the process for becoming authorized by the DFSA involves the following:

Submission of a Letter of Intent – The Letter of Intent generally covers the following:

Intention of the applicant and the activities intended to be conducted

Reasons for setting up in the DIFC

Founding directors and corporate structure

Resources and functions ̶details of who will be based in the DIFC entity

Permanent office space requirements

Submission of a Regulatory Business Plan (RBP) – The RBP should set out the strategy and rationale for establishing an operation in the DIFC, as well as demonstrate how the business will be managed and controlled. The DFSA needs to understand the business model of the applicant firm so they can ensure that it is authorized for the correct financial services, investment types and client types, as well as to enable them to assess the adequacy of the applicant firm’s resources. The applicant firm will need to do the following:

Identify all the financial services and any other activities it intends to carry out

Identify all the likely business and regulatory risk factors

Explain in depth how it will monitor and control these risks

Consider any intended activities

Submission of additional DFSA Application Forms and supporting documentation

The timing for processing each application for authorization can take anywhere between four and six months from the date of receiving the applicant firm’s full and complete application.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

The UAE does not have financial services “passporting” arrangements with any other jurisdiction. However, the DFSA has signed a number of MOUs with foreign regulators.

# 8. Authors and contact information

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