

## THE DEVELOPING CRYPTOASSET LANDSCAPE IN THE UAE

# Spotlight on anti-money laundering and counter-terrorist financing

David Berman and Victoria Ferres

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**David:** Welcome to this Allen & Overy podcast. My name is David Berman and I'm a senior associate in Allen & Overy's Middle East Litigation, Investigations and Contentious Regulatory group and I'm joined today by fellow senior associate Victoria Ferres, who is part of our Middle East Financial Services Regulatory group ["Hello"].

This podcast forms part of a series where we will be focusing on key considerations relevant to the emerging cryptoasset landscape in the UAE. In this episode we are going to focus on the unique Anti-Money Laundering and Counter-terrorist Financing issues relevant to cryptoassets in the UAE, including talking through a real life example and discussing key recent regulatory developments in this space in the UAE.

We are going to refer to the terms 'anti-money laundering' and 'counter-terrorist financing' as AML and CTF.

This podcast will be of interest to legal practitioners, individuals working in any financial services sector and other designated non-financial businesses and professions, and those interested in cryptoassets generally. This episode builds on the previous episodes on key legal considerations relevant to cryptoassets and consumer protection issues related to cryptoassets so we do recommend that you check out those episodes.

Before we look at the AML and CTF position on cryptoassets specifically, it's worth mentioning briefly the significant priority that the UAE has placed on developing its financial crime compliance credentials in recent years. Victoria, can you tell us more about this?

**Victoria:** Thanks, David. The pace of reform in this area in the UAE really accelerated after the Financial Action Task Force issued its 2008 Mutual Evaluation Report on the UAE. The report found that the UAE needed to make significant enhancements to its AML and CTF laws and framework for combatting financial crime. Since the report was issued, the UAE has introduced a raft of measures to enhance its financial crime credentials. This has included the introduction of a new AML Law and various other more practical measures such as the establishment of a national task force and a specialist money laundering court in Dubai.

Following the publication of the FATF's subsequent Mutual Evaluation Report on the UAE in 2020, and the UAE's recent addition to the FATF 'Grey List', it's expected that the UAE's focus on AML and CTF is only going to increase.

**David:** That's absolutely right Victoria. And, equally, the UAE has been taking a variety of steps to become a global leader and innovator in the cryptoassets space.

Given these two trends, it is really no surprise that the UAE would have AML and CTF considerations at the front of mind when approaching cryptoassets regulation.

**Victoria:** Of course, the other reason why there would be this focus is because cryptoassets are such attractive vehicles for financial crime. Can you tell us why that is, David?

**David:** There are really four main characteristics of cryptoassets which increase AML and CTF risks. First, virtual assets can operate in an anonymous or pseudo anonymous manner. They can be traded via internet platforms and are generally characterised by non face-to-face client relationships. This means that it can be harder to properly identify the source or destination of funds, which can be a really useful attribute for criminal actors trying to wash criminal property into the financial system.

Secondly, cryptoasset systems can be accessed via the internet (including via mobile phones), and can be used to make cross-border payments and fund transfers.

Thirdly, and related to the point I've just mentioned, virtual assets commonly rely on complex infrastructures using several entities, often spanning multiple countries, to transfer funds or execute payments.

**Victoria:** That's interesting. I guess the key risk there is that, because transactions can occur across various jurisdictions, the regulatory supervision and enforcement perimeter can be unclear and this can make it more difficult for regulators and law enforcement agencies to detect financial crime in respect of these assets and take appropriate action.

**David:** That's exactly right, Victoria. And in some cases, jurisdictions may not have very robust cryptoasset regulatory regimes, which further complicates the ability to detect and prevent financial crime.

Lastly, and this is a point you raised in our episode on the regulation of cryptoassets in the UAE, all these issues are exacerbated by the rapidly evolving nature of the technologies used by cryptoasset businesses, including the changing number and types of participants providing services in the cryptoasset ecosystem. This makes it extremely difficult for regulators administering financial crime compliance regimes to keep up.

**Victoria:** Interesting, do you have an example of how these AML and CTF issues may arise in a cryptoasset context?

**David:** There are many examples but the one that springs to mind, and an example that the Financial Action Task Force often uses, is the "Wannacry" crypto ransomware attack in 2017.

In that case, cybercriminals infected about 230,000 computers globally with a virus called a 'crypto worm', which encrypted and locked users' access to their files.

Certain affected businesses ended up paying the Bitcoin ransom. And the cybercriminals then tried to layer the funds into various other forms of cryptoassets in order to remove all links to the crime.

The authorities managed to stop the cybercriminals during the layering process, but had this not been the case, the cybercriminals would have been able to send the "cleaned" Bitcoins to a cryptoasset services provider or bank to convert the virtual assets into fiat currency which could then have been invested in a bank and spent.

This example demonstrates the key role that cryptoasset regulators can play as a gate keeper in detecting and preventing financial crime. A properly functioning regulator with appropriate regulatory powers would have a much higher prospect of being able to detect and prevent the cybercriminals from introducing criminal cryptoasset property into the financial system by requiring consumers to comply with stringent due diligence and know your customer requirements. It would be much more difficult for a lightly regulated or unregulated cryptoasset services provider to detect such activities.

So, Victoria, can you tell us a little bit about the regulatory landscape in the UAE relevant to cryptoassets and their interaction with AML and CTF compliance?

**Victoria:** We have mentioned in our previous episodes that cryptoassets are regulated differently and by different bodies depending on whether they're offered from the 'onshore' UAE or the financial free zones. The same applies to financial crime regulation.

The Abu Dhabi Global Market was the first jurisdiction in the world to introduce a comprehensive bespoke regulatory framework for virtual asset activities back in February 2020 and so it has had the time to develop a fairly sophisticated AML and CTF regulatory compliance perimeter which extends AML and CTF compliance requirements to all cryptoasset services providers which offer ADGM accepted virtual assets.

In October 2021, the Dubai Financial Services Authority introduced a regulatory regime for investment tokens and has further published a consultation paper with proposals to extend AML and CTF requirements to other classes of virtual assets.

And at the federal level since 2021, as you have already mentioned David, there have been a raft of changes to the UAE's AML and CTF framework. This has included changes to specifically bring cryptoassets within the remit of the UAE's overarching AML Law. Cryptoassets are now included in the definition of "funds" within the legislation. This means that they now come within the perimeter of the laws prohibiting money laundering and terrorist financing and the laws requiring individuals in the financial sector and other Designated Non-Financial Business Professions to report knowledge or suspicion of money laundering or terrorist financing.

**David:** I guess the key take away from all this is that the UAE appears to be on a fast paced programme of reform and development both in the cryptoassets space and in the area of AML and CTF compliance.

**Victoria:** Correct. Which means that businesses operating in the cryptoassets space should place significant focus on ensuring that they comply with the increasingly stringent AML and CTF requirements applicable to cryptoassets here in the UAE and making sure that they are sufficiently agile and conducting sufficient horizon scanning to adapt to further changes and even more stringent regulation in the AML and CTF space in the future.

**David:** Thanks, Victoria. That brings us to the end of this episode. As we mentioned at the outset, this podcast forms part of a series of podcasts we are releasing on all things crypto, so do look out for the other episodes. Thanks for listening and please do get in touch if you have any thoughts or comments on this podcast.



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