

NFT, a cryptocurrency?

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Although the idea of NFTs emerged somewhere between 2012 to 2014, interest in NFTs have spiked over the course of 2021 with quite a few deals grabbing the headlines, including the sale of the first tweet of the former CEO of twitter, Jack Dorsey, for \$ 2.9 million.

What is an NFT?

Simply put, it is an acronym for “non-fungible token” meaning a digital asset with unique characteristics, which cannot be replaced for another digital asset.

It typically, exists on a blockchain – the technology that underpins crypto assets including cryptocurrencies. However, unlike cryptocurrencies such as Ether and Bitcoin, NFTs as cryptographic tokens are not mutually interchangeable and therefore, are not fungible. This makes each NFT a “one-of-a-kind” asset in the digital world that can be bought and sold like any other piece of property, but which has no tangible form of its own. Given this feature, it is seen commonly used as a digital certificate of authenticity representing ownership in an associated digital or physical asset including audio, video, images, paintwork etc.

While the digitisation of these assets proved to be a good avenue for budding artists, musicians, and other creatives to capture wider audience and commercialise their work, its popularity gained traction from the financial services industry as well, in terms of potential of an investment. Therefore, the concerns around the need for financial regulation of such tokens.

This article aims at providing an overview of some of the considerations that may need to be considered from a regulatory standpoint, both from a financial and technology perspective, while considering dealing with NFTs by way of business in and from the United Arab Emirates.

Are NFTs really regulated in the UAE?

It depends.

Generally, in the UAE, crypto assets are not characterised by way of their intended use, to determine the regulatory approach. Rather, the determination is usually based on the actual use.

For example, a crypto asset may by its very nature be meant to be a utility token (and therefore, potentially not regulated as a financial product) but is in fact, given the popularity, traded for investment purposes. Such a crypto asset is likely to be treated as a financial product and will be subject to relevant UAE securities regulation. It is, therefore, critical to consider the actual use of the crypto asset to be able to determine whether such asset would be subject to any financial regulations.

Accordingly, there are no regulations that specifically regulate NFTs but each of the UAE mainland, Abu

Dhabi Global Market and Dubai International Financial Centre have their respective regulations around crypto / virtual assets which regulate such assets, depending on the actual use of such asset, by way of business.

As we have covered in our earlier editions of the law update, Abu Dhabi Global Market (**ADGM**), which is a financial free zone within the geographical boundaries of Emirate of Abu Dhabi, is one of the first jurisdictions in the world to regulate crypto assets that fall within its definition of virtual assets. The term “virtual assets” is defined within its regulations to be any *“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 Virtual 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 Virtual Asset; and (b) distinguished from Fiat Currency and E-money”*.

While, the definition of virtual assets is broad enough to include crypto assets, which potentially could mean NFTs as well, the financial regulator i.e., the Financial Services Regulatory Authority clarified by way of guidance that its regulations are limited to cryptocurrencies, digital assets, stable coins and derivatives / funds (including any ancillary activities conducted in relation to them) and does not extend to utility tokens, which do not exhibit the features and characteristics of regulated investment / instrument.

Following the regulations issued by the ADGM on virtual assets, the UAE mainland regulators, the Central Bank and the Securities and Commodities Authority (**SCA**) issued regulations on dealing with crypto assets and broadly explained crypto assets as *cryptographically secured digital representations of value or contractual rights that use a form of distributed ledger technology and can be transferred, stored, or traded electronically*. Therefore, potentially capturing NFTs. However, the Central Bank, being the currency regulator limited its regulations to crypto assets, those are being used as stored value facilities for storing currency or payment tokens (e.g. stable coins or other tokens back by fiat currency). Therefore, they do not apply to NFTs. SCA, on the other hand, clarified that its regulations apply to most forms of crypto assets whether securities or otherwise, which are listed and available for trading on an organized market, with exception of those being regulated by the Central Bank.

The regulations issued by the regulators in the ADGM, the Central Bank and the SCA were followed by the Dubai International Financial Centre’s (**DIFC**) regulatory framework on investment tokens. Such regulatory framework is currently aimed at regulating: (a) securities and derivatives in the form of a cryptographically secured digital representation of rights and obligations that is issued, transferred and stored using distributed ledger technology or other similar technology; and (b) a cryptographically secured digital representation of rights and obligations that is issued, transferred and stored using DLT or other similar technology and: (i) confers rights and obligations that are substantially similar in nature to those conferred by a security or derivative; or (ii) has a substantially similar purpose or effect to a security or derivative.

Accordingly, while NFTs by its very nature may not qualify to be a financial product, it may still be subject to financial regulations in the UAE, when dealt with by way of a business, depending upon its actual use and the jurisdiction within which, it is being dealt with.

Are there media and technology laws in the UAE that apply to NFTs as crypto assets?

NFTs, being a recent development, are not addressed under the current UAE media and content laws. However, that does not take away considerations from a legal stand point, while considering these laws.

The National Media Council (“**NMC**” which is now replaced by the Ministry of Culture and Youth (“**MCY**”) and regulates media activities through its Media Regulatory Office) issued laws applicable to UAE

mainland and free zone, which define the term: (a) “media content” as “any explicit or implicit, direct or indirect information or messages included in or mentioned by the publishing or the printed matter of whatsoever kind or mode whether they are transmitted live or recorded and then transmitted, retransmitted or conveyed to the audience again by any mode, including but not limited to performance, presentation, show, movies, drama, advertisements, etc. ”; and (b) “advertisement” as “any means intended to inform all people about a certain commodity or purpose, whether by presentation or publication in writing, drawing, image, symbol, sound or other means of expression ”, which in theory extends to both the content and advertising of crypto assets, especially the NFTs – a crypto asset that is primarily based on content.

The NMC laws provide guidelines and standards concerning content and advertising, including the dos and don'ts, which need to be taken into consideration while creating or promoting an asset in the UAE. For example, the use of the UAE national flag and national emblem for commercial purpose is generally prohibited under the laws.

In addition to this, the UAE recently issued Federal Decree Law No. 34 of 2021 Concerning the Fight Against Rumors and Cybercrime, including provisions on offering and promotion of non-recognized crypto assets. In particular, the law restricts everyone who uses the internet or technology for “advertisement, promotion, mediation or dealing in any form or encouraging the dealing in a virtual currency, cryptocurrency, stored value unit or any payments unit not officially recognized in the UAE or without being licensed by the competent body”..

Therefore, similar to the creation and promotion of other digital assets, vetting is necessary as to the content and advertising of an NFT prior to creating or offering them in the UAE.

Looking Ahead

With all the opportunities that NFTs present for NFT creators and investors, it is really important to be aware of the relevant UAE laws and potential risks whilst assessing the opportunities NFTs offer. With the constant advancement of technologies, the laws are regularly evolving and it is equally important to stay up to date.

For more on NFTs, and the intellectual property law issues connected with them, please see our Head of Innovation, R&D and Industrial Property's recent NFT blog.

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