

Looking ahead to 2023 & beyond...

Rebecca Kelly and Ayman Khaleq of Morgan, Lewis & Bockius forecast emerging trends and developments in the Middle East, with a focus on financial services, technology and litigation.

Hot on the heels of the Qatar World Cup, there is a feeling of dynamism and optimism within the region for investment and trade in the years ahead. Legislative developments continued at an accelerated pace across a range of sectors, particularly around technology and financial services and it is likely we will see more significant changes as the region raises its profile as an investment hub and promotes competitiveness within the global markets. We look at some key developments from 2022 and ahead to what is likely down the track for 2023.

FINANCIAL SERVICES AND DIGITAL ASSETS

The financial sector has seen some extensive legislative developments over the past 24 months and is set to see more. In July 2021, the UAE SCA issued a rulebook for financial

activities under Board of Directors' Decision No. (13/R.M) of 2021. The Rulebook set out a consolidated regime for licensing and prudential requirements for SCA licensed firms and also consolidated existing regulations for financial activities in respect of securities. Regulations on markets, securities issuances and the general capital markets oversight functions of the SCA will continue to be subject to separate legislation and SCA regulations.

The UAE Central Bank has taken a number of proactive and positive steps addressing deficits in the anti-money laundering regime with the UAE government improving overall oversight of financial services to ensure compliance with global anti-money laundering and data protection standards, particularly in view of some of the geopolitical developments in other markets that result in the movement of people and capital to the UAE.



In furtherance of ESG, the Dubai Islamic Economy Development Centre (DIEDC) recently signed a memorandum of understanding (MoU) with the Dubai International Financial Centre (DIFC), the Dubai Financial Market (DFM), and Climate Bonds Initiative (CBI) to collaborate on growing the green Sukuk sector and stepping up the exchange of knowledge and expertise in the field. The MoU promotes the issuance of green Sukuk in the UAE and across the world, in addition to developing the standards of certification for green Sukuk along the lines of the Climate Bonds Standard and Certification Scheme.

The rise in digital assets, and despite recent developments affecting the sector, has presented a challenge for regulators around the world in being able to keep up with developments. On March 11, 2022, the Dubai Government issued Dubai Law No. (4) of 2022 Regulating Virtual Assets in the Emirate of Dubai, the first of its kind within the region. This law established a virtual assets regulatory regime in Dubai to protect investors and promote responsible business growth by creating a virtual assets regulator, permitting the regulator to create appropriate laws and regulations, defining "Virtual Assets", and identifying business activities that would require a specific license.

The DFSA has also enacted a new Crypto Tokens in the DIFC (the "Crypto Token Regime") which took effect on November 1, 2022. The changes through the Crypto Token Regime include expansions to the scope of several current financial service activities (such as advising, dealing, arranging, trading and custody) to allow firms in the DIFC to be able to provide products and services in relation to Crypto Tokens. Following the implementation of the Crypto Token Regime, any person proposing to carry out certain activities in or from the DIFC, in relation to Crypto Token financial related services, will require DFSA approval or prior authorization.

In November 2022, the FSRA released a Consultation paper to seek views on their proposals for a regulatory framework for sustainable finance. The proposed amendments FSRA's Companies Regulations 2020, FSRA's Financial Services and Markets Regulations, and the Conduct of Business, Funds and Markets Rulebooks, and the FSRA Glossary.

As credit gains prominence, particularly

through alternative lenders and credit funds, the DFSA has amended the DFSA Rules to bring clarity around the Credit Fund Regime which took effect on 1 June 2022. The changes in accordance with the Credit Fund Regime, mean that a DIFC fund will be regarded as a credit fund if its investment objective is to use at least 90 per cent of its assets (i.e. investors' monies) to "Provide Credit", including by acquiring loans. This Consultation Paper outlines ADGM's first iteration of a Sustainable Finance regulatory framework with further amendments to include proposals to incorporate climate risk into risk management and governance processes.

Overall, the United Arab Emirates continues to expand its private investment funds ecosystem. This is not just by virtue of policy and legal reform, but also in the types of institutional investors involved. Most notably, we see an increase in sovereign wealth fund (SWF) anchor investments into regional funds and seed-and-stake arrangements in respect of new regional fund managers. This is in addition to a marked increase in venture-capital investment across the region, often driven by SWFs anchoring new investment funds and because of the success of several high-profile regional unicorns.

We are likely to see further changes to increase the regulatory oversight of financial services. As mentioned, there have been extensive legislative developments over the past 12 months by the UAE government to improve business operations in the region, streamline many processes, and improve the overall oversight of financial services to ensure compliance with global anti-money laundering and data protection standards.

TECHNOLOGY AND TELEHEALTH

Both digital and telehealth provision in life sciences have increased in the region, which aligns with governments' drive to encourage and facilitate online services across all sectors. We have seen a range of our global life science and health companies partnering to expand their international offerings within the United Arab Emirates to establish a regional hub outside of the United States and Europe.

Advances in technology have also driven business efficiencies in the Middle East, and transformation issues and hybrid work solutions are some of the things that many clients are coming to terms with—alongside



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an ever-increasing mobile workforce. The United Arab Emirates has also made significant moves through updated visa and residency rules to encourage global teams to consider the United Arab Emirates as a viable option to undertake remote work.

LITIGATION

With a raft of legislative changes, we have witnessed an increase in the level of business confidence in the region’s dispute resolution centres. There has been a significant increase in the amount of cross-border litigation commencing from the United Arab Emirates, as business operations within the region continue to be globalised. Supply-chain issues in the aviation sector, particularly following COVID-19 and the conflict in Ukraine, are driving some of this activity, alongside the increase in the number of sanction entities, individuals, and countries.

Recently, the UAE Ministry of Justice also issued a directive allowing the courts in Dubai to enforce judgments and orders issued by English courts. The UAE and English governments had never previously entered into a bilateral treaty for the reciprocal recognition and enforcement of commercial judgments. It has been well received by the business community, and we will see an increased level of confidence for UK-based investors who are looking to enforce judgment debts from English courts or arbitration awards. Along with

recent amendments to the Civil Procedure Rules, allowing English to be used in the local courts for the first time, we have seen amendments to the Commercial Transactions Law, the Labour Law, Data Privacy and AML and criminal laws.

NEW OPPORTUNITIES

Looking ahead to 2023, the raft of regulatory changes largely aimed at encouraging competitiveness for the region on the global stage and promoting investor confidence in the market, are likely to set the backdrop for continued vibrancy in the year ahead. 🇦🇪



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