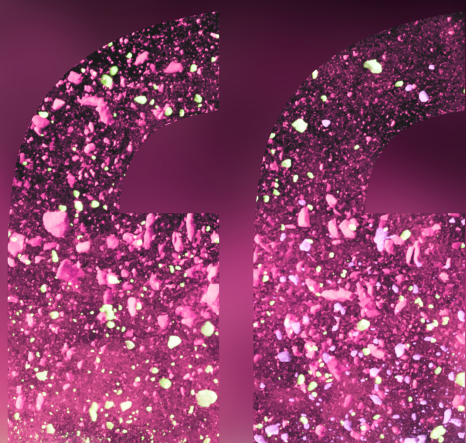


C L I F F O R D
C H A N C E



**FINTECH IN THE
MIDDLE EAST –
DEVELOPMENTS
ACROSS MENA**



– THOUGHT LEADERSHIP

JANUARY 2019



FINTECH IN THE MIDDLE EAST – DEVELOPMENTS ACROSS MENA

In this report, which updates the report we published in October 2017, we highlight key trends and developments in financial technology (fintech) across 10 different MENA jurisdictions. Fintech continues to transform the delivery of financial services across the region and remains high on the agenda of industry participants and governments seeking to develop and modernise and, for GCC governments, to diversify from natural resources.

Regulatory sandboxes, tech incubators/accelerators and government-driven initiatives support a growing base of fintech start-ups. Regional and international financial institutions are rolling out digital platforms and innovative solutions. World leading licensing regimes for crowdfunding and crypto-business are now in place in the UAE. In the past year Clifford Chance has worked closely with regulators, fintech companies, financial institutions and corporates on the existing and emerging regulatory frameworks.

Across the Middle East, fintech is driven by technology-enabled innovation that improves existing financial services, but also provides routes for unbanked populations to access financial services.

Government support and tech developments, together with high smartphone penetration, have contributed to the development of start-ups in the Middle East and the GCC in particular.

As of December 2017, fintech investment in the Middle East remains a small proportion of the massive amounts being invested globally, and total fintech start-ups in the Middle East and North Africa were valued at US\$66.6 million (Magnitt State of the Middle East and North Africa Funding report). The majority of investments/start-ups have been in the UAE.

However, by 2022, the fintech market is estimated to reach a value of US\$2.5 billion across the broader MENA region, according to Accenture. We see an increasing number of exciting mandates for the future.

From a regulatory standpoint, we continue to see rapid change and our work in this area has expanded since our last report to comprise a growing range of issues. The central banks of Egypt, Bahrain, UAE and Jordan have adopted specific initiatives to regulate digital payment services. Lebanon, the Dubai International Financial Centre (DIFC) and Bahrain introduced crowdfunding regulations (as detailed in our last report). During 2018, the Abu Dhabi Global Market (ADGM) also implemented crowdfunding regulations, though its private financing platform licensing framework, and created a licensing regime for crypto-asset business (not ICOs). The UAE securities regulator has announced plans to license ICOs in the coming months and, as part of the Emirates Blockchain Strategy 2021, the UAE government has announced its intention to use blockchain for 50% of federal government transactions by 2021.

In the sandboxes, Clifford Chance continues to support the DIFC Fintech Hive and ADGM Reglab, which have expanded rapidly in the UAE financial free zones. More and more of their

“We have seen many public and private institutions working together on new initiatives and the market is recognising the power of collaborative approaches in fintech.”

initial participants are successfully raising international capital and entering the market, such as Sarwa (a robo-adviser platform in the DIFC). 'Onshore' UAE will also host a similar fintech sandbox, as announced by the Securities & Commodities Authority (SCA) earlier this year. The Bahrain Fintech Bay has had success in the crypto-space by hosting one of the first licensed crypto-exchanges and the Sharia Review Board in Bahrain has certified Stellar, the first DLT protocol to be Sharia-compliant. Kuwait shall also host a regulatory sandbox, with the Central Bank of Kuwait announcing such plans in November 2018.

In a major development for the region, Fintech Saudi has been launched, with both the Saudi Arabian Monetary Authority (SAMA) and the Capital Markets Authority (CMA) as partners along with a host of banks, service providers and fintechs. The CMA also created a fintech lab and is issuing permits for financial technology experimentation. Finally, in the UAE, having received input from a public consultation, the SCA Board of Directors approved draft regulations in July 2018, setting the regulatory controls for the fintech sector in the form of a pilot regulatory environment (a UAE sandbox) to enhance and support the financial integrity of fintech companies.

Dialogue is underway between regulators in the region, especially amongst the GCC, regarding the challenges and opportunities presented by the evolution of fintech. For example, we are seeing the first signs of regulatory sandboxes seeking to work together across the GCC and share approaches. We have also seen many public and private institutions working together on new initiatives and the market is recognising the power and speed of collaborative approaches in fintech.

We have worked with a number of regulators and market participants in the region in this space and found a positive trend towards cooperation and openness.

In Saudi Arabia, it was recently reported from some sources that cryptocurrencies have been made illegal. However, a public announcement by a Standing Committee consisting of SAMA, the CMA and other KSA authorities stated that cryptocurrencies were not regulated within the Kingdom and issued a warning, similar to many other jurisdictions, on the dangers of speculating in this market. SAMA has actively supported the adoption of blockchain in payments and signed an agreement with Ripple this year to help banks improve their payments infrastructure in the Kingdom.

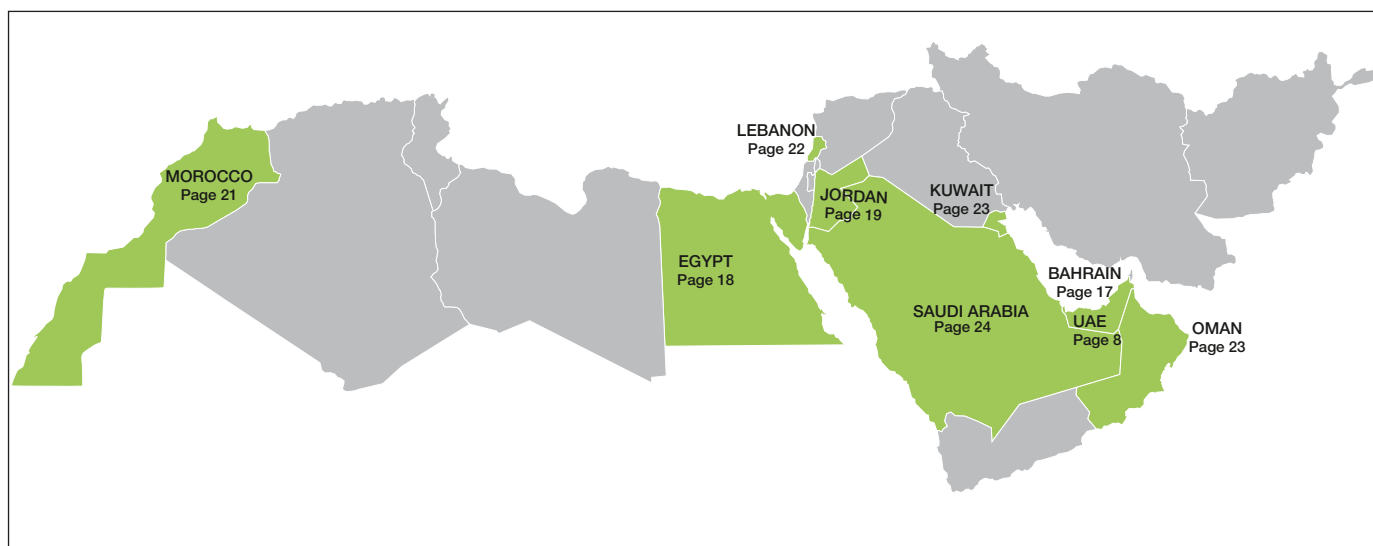
Across the Middle East, legislation is in place to recognise e-commerce and digital signatures, with more recent e-commerce regulations covering electronic payments in certain jurisdictions, such as the UAE and Kuwait. However, most e-commerce regulations still contain significant exclusions for certain types of transactions (such as real estate, negotiable instruments and local law notarisation requirements), therefore limiting the use of e-contracts and electronic communications in these areas. We expect this to be addressed in the near future. In May 2018, the Dubai Land Department announced that it is creating a "Real Estate Self Transaction" platform for digital transactions in land for 2020.

We hope you find the information and insights in this report useful and look forward to discussing, and working with you on, many of the upcoming developments in the ever-evolving Middle East fintech space.

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Current regulatory environment:

1. Regulations implemented
2. Regulations planned
3. No specific regulations, but conducted under regulatory supervision
4. No specific regime now or anticipated in the near future

	 Cryptocurrency trading/ICOs	 Payment services/ mobile wallets	 Crowdfunding	 Sandbox/regulatory testing license?
● ADGM*	1	1	1	Yes
● UAE	2	1	1	Yes ¹
● DIFC*	2	2	1	Yes
● BAHRAIN	3	2	1	Yes
● KSA	4	3	2	Yes
● KUWAIT	4	1	4	Yes ²
● JORDAN	4	1	2	No
● EGYPT	4	1	2	No
● LEBANON	4	1	1	No
● MOROCCO	4	1	2	No

This Report does not cover Qatar or Israel.

1 A sandbox is being established by the SCA, we understand. We are not aware of any specific licences having been granted at the date of this Report.

2 To be implemented.

* UAE Financial Free Zones

LEGAL CONCERNS FOR FINTECH INVESTORS

The following table sets out an update as of November 2018 to the common legal concerns detailed in our 2017 report, for those considering investing in fintech in the Middle East. The table sets out updated mitigants/solutions to those concerns.

Legal systems and enforcement	
<p>Uncertainty: The Middle East has historically been relatively slow to adapt to international standards or make modernising changes to legal systems, leaving some uncertainty regarding the enforcement of rights and obligations. In many cases, this can be due to linguistic or cultural approaches or through the necessity of prioritising core structural reforms to promote economic and social stability.</p> <p>In addition, Sharia laws are applied to varying degrees across the Middle East (for example, Sharia is considered to be a source of law in both the UAE and Egypt, but is applied as the law in Saudi Arabia). Such laws can provide restrictive penal provisions for wide-ranging matters relating to “decency”, such as broad restrictions for online content considered offensive to public morals. This can restrict, or add uncertainty to, certain technological developments.</p>	<p>Mitigants/solutions: There are various specific licensing regimes in the Middle East that can counteract issues around uncertainty, such as the financial regulatory regimes in the UAE financial free zones. These free zones provide for an English common law approach in respect of their own court system, which allows for greater certainty in commercial transactions.</p> <p>Regarding Sharia developments, Islamic finance is keeping pace with modern finance and could, by analogy, be extended to fintech. In the UAE, the DIFC Fintech Hive has made strides in this space by making Islamic finance fintech a key target area, as noted in the DIFC section of this report. As noted above, the Sharia Review Board in Bahrain has certified Stella the first DLT protocol to be Sharia-compliant.</p> <p>The market-leading Islamic Finance practice at Clifford Chance has been involved in some of the most innovative structures in recent years to provide equivalent finance and insurance products to consumers and investors seeking Islamic compliance. Our experience tells us that modern financial services solutions are recognised as necessary by Sharia scholars for many reasons. The innovation we see across the Islamic finance world parallels the innovation taking place within fintech.</p>
Financial services regulation	
<p>Limited specific regulations: Only five of the ten jurisdictions covered in this report have specific regulations in place which target fintech developments other than payment services. In addition, where such regulatory regimes are in place, such as the UAE financial free zones, attempts to scale an existing fintech business can be difficult as it is not possible to access new consumer markets (such as operations outside of the financial free zones in the UAE) without an additional local licence.</p> <p>In some jurisdictions, a lack of a specific licence for the relevant activity permits the fintech firm to operate unlicensed, but in others, it brings the spectre of a Central Bank requiring a banking licence for the relevant activity to ensure it falls within their purview.</p> <p>In some instances, the trust and legitimacy provided through having a financial services licence is required to access new markets and consumer bases.</p>	<p>Mitigants/solutions: The number of specific regulations and regulatory sandboxes announced and/or being implemented in the Middle East is growing, and has increased significantly since our 2017 report.</p> <p>The newly-implemented crowdfunding regulations in the DIFC and ADGM, and the crypto-asset regulations in the ADGM, will provide entities with new forms of operating licences and may prompt the implementation of similar regulations in other jurisdictions in the region.</p> <p>In addition, whilst fintech start-ups may face a long time period and extensive capital investment before obtaining a banking licence, partnership opportunities with existing banks are well-promoted in the Middle East. As a recognised method of receiving regulatory support, such as in the UAE, with several banks offering digital platforms and supporting collaboration with fintech start-ups.</p>

Governmental support

Difficulty of engagement: Language barriers and limited resources have historically caused many firms to struggle in arranging the right audience to facilitate their introduction to markets in the Middle East.

Mitigants/solutions: Governments and supporting departments, especially across the UAE, have been very responsive and quick to move with the times in their support of fintech. This is reflective of fintech falling within central principles of government agendas for the future advancement of technology and innovation, and acknowledgement of the need to diversify from natural resources. The young demographic of the Middle East means that there is a ready acceptance of new technologies in the region. In Clifford Chance's recent experience, governmental authorities have committed resources to establishing networks and cooperation in the fintech space, and have been willing to work with prospective and incumbent participants.

Foreign ownership laws

Barrier to foreign entrants: Some jurisdictions, such as the UAE and Qatar, only permit a non-national (or non-GCC) shareholder to hold 49% of companies in certain sectors. As a result, investors may be unwilling to invest capital to establish a presence in the absence of a trusted local partner or network.

Mitigants/solutions: In several jurisdictions, such as Saudi Arabia, foreign investment is growing and restrictions have been lifted in a few areas, most recently engineering. However, in practice many investors still choose to invest with local partners for commercial reasons.

The UAE has announced plans to lift the 49% ownership restriction in certain industries, which would allow foreign investors to own 100% of companies. The sectors applicable are yet to be announced, but we expect the changes will benefit technology entrepreneurs looking to set up in the region.

UAE free zone incorporation is also a solution in many circumstances. Challenges may come in subsequently operating outside of the free zone, for example to visit and contract with customers, and a careful cross-border analysis is required in each case.

Cyber and privacy laws

Perceived heightened risk and sensitivities: Cyber-risks are “top of the agenda” items for the management of organisations across the globe as cyber-events continue to make world news and cause significant disruption and reputational harm. There can be a heightened sense of concern in the Middle East due to geographical proximity to regional instability, and media reports have highlighted business across the region as susceptible. Linked to this, privacy laws are often intended to protect national security, and can be limited in scope in certain jurisdictions.

Mitigants/solutions: Many regions across the Middle East have the tools to be well-equipped to protect themselves as well as any other jurisdiction. In addition, we see that local firms often use international data hosting services. Therefore, we see this issue as a global threat which firms can mitigate through tools available across the world, rather than a region-specific issue.

Any goods or services offered by MENA companies to European Economic Area individuals run the risk of being caught within the remit of the EU General Data Protection Regulation (GDPR). This is aimed at addressing data protection and privacy issues to firms marketing into and monitoring persons in the EEA.

Clifford Chance has noted a strong desire by many Middle East companies to become GDPR-compliant (on start-up, if possible), even where not directly dealing with EEA individuals. Several high-profile data privacy scandals, such as the Cambridge Analytica incident, have also pushed the onus onto companies themselves to take the initiative and to be self-regulating. As such, international regulation and the focus by consumers on privacy has led to increased standards across the region.

Intellectual Property (IP) protection

Undeveloped IP regime: IP protection laws exist throughout the Middle East, and brand rights are well-recognised. It is now possible to obtain patents that cover the whole of the GCC (such patents are not recognised by the international Patent Cooperation Treaty regime (PCT) but all GCC member states are separately contracting states to the PCT). A separate GCC Trademark Law is also in force, but has not been ratified by the UAE. However, the regime of examination and enforcement remains nascent in respect of copyright, industrial design and patents compared with some other jurisdictions. Fintech entrepreneurs may, as a result, be more reluctant than in other jurisdictions to invest capital for development in the Middle East or face a complicated decision on IP licensing strategy.

Mitigants/solutions: Entrepreneurs may consider obtaining patents in more developed jurisdictions (for example in the US, Europe or Japan) as well as in the GCC. This will provide more effective protection against international infringement. In addition, innovators can use other means of protecting their intellectual property, such as the protection of trade secrets and digital rights management technologies.

In practice however, the collaborative nature of many fintech propositions and open source code/open APIs backing many projects, especially for distributed tech, has meant firms have been able to press on with projects without lengthy delays by “stopping the clock” to seek patent registration.

Regular confirmations of IP assignments from contractors and employees upon termination is recommended and should be manageable for many firms.

AML regimes and sanctions risks

Compliance costs: Local operations can require significant costs in KYC/CDD checks and mitigating compliance risks.

Mitigants: Many local fintech initiatives are being developed in the regtech space. Strategies of local authorities to adopt technology will enhance transparency and focus on the prevention of money laundering and other financial crimes. For example, the ADGM announced the launch of an electronic KYC platform in February 2018, which will be developed in collaboration with a number of leading UAE financial institutions and is intended to increase KYC efficiency for all participating financial institutions in the region.

“The UAE remains the regional leader for fintech both in respect of the number of participants and forward-thinking approaches of UAE governmental authorities.

From a regulatory standpoint, this is reflected in the rapid development of fintech regulations in the ADGM, DIFC and “onshore” UAE. The DIFC published a world-leading regulatory regime for operating a crowd funding platform in 2017. This was followed by an equally leading and innovative regime for “operating a crypto-asset business” in the ADGM (which recently also issued a crowd funding regime). Most recently, the SCA has announced plans to create a licensing regime for ICOs, which may also create a unique regulatory framework in the alternative fund raising space.

What has differentiated the UAE from other jurisdictions across the world has been the willingness, through its Free Zone Authorities in some respects, not only to take regulatory initiatives but also to create bespoke licensing frameworks for specific types of fintech operations.”

The DIFC and ADGM are covered in separate sections to the UAE in this report.

UAE

Fintech remains a hot topic in the UAE, particularly in Dubai and Abu Dhabi with the two key financial free zones, the DIFC and ADGM cementing their significance in the sector, with regulatory sandboxes/ testing licences available for start-ups supported by fintech-specific licensing frameworks in crypto and crowd-funding. Whilst fintech regulations have been most actively developed in the DIFC and ADGM, this may change with the SCA announcing in September 2018 that it plans to regulate ICOs as securities (pursuant to a new regulatory framework) in the coming months.

The governments of Dubai and Abu Dhabi have also focused on ‘smart’ technology that may benefit public services, such as the Dubai Land Department’s adoption of blockchain or Abu Dhabi’s new public outreach app, CityGuard. On a federal level, there have also been developments in the digital payments space. Once fully implemented, the UAE Central Bank’s (the Central Bank) licensing framework for stored value facilities offering certain digital payment services should provide an additional licensing regime for payment services and mobile wallets.

UAE banks and financial institutions continue to announce digital platforms and innovative electronic solutions on a regular basis. These range from e-payments and electronic wallet services to robo-advice platforms, which offer computerised financial planning services that are algorithm-driven, with little or no human supervision.

Regulatory developments

“Onshore” implications and developments

ADGM and DIFC-based entities must still be licensed in the jurisdictions in which they want to provide products and services. The free zones do not currently provide a passport to any other jurisdiction, such as the ‘onshore’ UAE. This means fintech entrepreneurs setting up in the free zones will still have to navigate a number of different regulations issued in ‘onshore’ UAE by the Central Bank for traditional banking and financing activities, the SCA for securities and investment activities, and the UAE Insurance Authority for insurance

(including insurance-based investment contracts commonly sold by IFAs in the UAE).

Of these regulators, the SCA has announced its fintech initiative, a fintech framework, and plans to regulate ICOs (see below). However, only the Central Bank has published onshore regulations which target a particular sector of the fintech industry – namely, payment services and mobile wallets.

Payment Services

In January 2017, the Central Bank established a new licensing framework for stored value facilities offering certain digital payment services, with the implementing regulations for licences yet to be published. Currently, the licensing scope is uncertain and a number of implementing rules are awaited (and expected in the coming months) before licence applications can be made. Depending on the interpretation of the Central Bank, its framework may have a more limited remit than initially thought and a number of industry participants have received guidance that the rules will not apply to them. Others, we understand, have pursued in-principle approvals to continue with mobile wallet projects until full licence applications can be made.

Where such payment services firms seeking a licence are engaging with the Central Bank’s payment services and policy team, we understand that the Central Bank has been receptive to hearing presentations from firms and working with them. This phase appears therefore to offer a real opportunity for such firms to be licensed by Central Bank regulation in a way which works for their business.

The published Central Bank regulations do present some challenges for firms, however, including that a retail payment services provider must be majority-owned by a UAE Commercial Bank and in-scope payment services providers must host their data in the UAE.

For the non-regulated, partnership with local banks is a common platform for fintech firms in the Middle East, including the UAE. This can provide an effective way to seek regulatory clarity by engaging in services which, as may be confirmed by the relevant regulator, rely

upon the bank's licence for the relevant parts of the payments transaction chain and leave other aspects within the fintech firm's responsibility. For example, in most jurisdictions in the Middle East, the mere provision of software to enable an online payment gateway to operate between a merchant and acquiring bank would not be within the regulatory perimeter of the relevant central bank.

However, other stored value providers have sought to structure around the regulatory hurdles. For example, to use Beam Wallet, a mobile wallet app in the UAE, for certain transactions, users pay for "Beam Credits" at the point of sale, generated specifically for that purchase (and not for any other purpose). This type of structure could permit Beam to avoid any stricter regulations by relying on a "closed loop" for credits (a recognised exemption from stored value facility licensing requirements in the Central Bank regulations noted above).

Finally, we have seen the fast uptake of smartphone payment apps in the UAE this year. The Emirates Digital Wallet initiative is a joint project amongst a large number of UAE banks to create a mobile cash wallet available to their respective customers. This and certain other wallet-based projects are likely to hit the market in the near future and it remains important for the Central Bank to provide clarity on licensing scope and procedure in this area.

New Banking Law

A new banking law has been issued containing some provisions relevant to fintech. Decretal Federal Law No. (14) of 2018 Regarding the Central Bank and Organization of Financial Institutions and Activities (2018 Banking Law) came into force in October 2018, with a grace period for various provisions.

The 2018 Banking Law sets out a number of new categories that are to be considered "financial activities", and therefore regulated by the Central Bank, such as the provision of virtual banking services, stored value services, electronic retail payments and digital money services. The term "virtual banking services" is not defined, but is likely to be considered broadly by the Central Bank. As discussed in detail in the

"Crowdfunding" section in this section of the Report, the 2018 Banking Law may also require crowdfunding platforms to obtain a Central Bank licence.

In addition, the 2018 Banking Law explicitly requires licence-holders to keep customer data and information confidential, thereby setting a standard for data protection in the UAE banking sector that may have an impact for some fintechs that work with banking data or provide open banking services.

AML considerations

Any payment services operation needs to be alert to the fact that, while a licence may not be required for operations, its activities remain financial in nature and require customer due diligence/KYC and oversight, from an anti-money laundering and counter-terrorism financing perspective, in many jurisdictions across the Middle East. The UAE is due to be reviewed by the Financial Action Task Force (FATF) in 2019 and, as a result, we have seen AML rule amendments in the DIFC and a new UAE AML Law very recently. We expect new executive regulations on AML shortly and, upon clarity regarding the scope of regulation, we expect most payment services firms will become liable to conduct more detailed customer due diligence and create enhanced AML oversight functions.

SCA Fintech Initiative

The SCA has launched its own fintech sandbox, intended to provide start-ups with a relaxed regulatory environment that will allow them to test innovative products, services, solutions and business models for a period between six and twelve months. During this period the SCA will provide oversight and guidance, with the overarching aims of attracting investors, contributing to economic growth and protecting consumers.

In collaboration with PWC, and with Central Bank engagement, the process of establishing the fintech sandbox has involved benchmarking international capital markets practices, agreeing the criteria for participants and determining safeguards to protect both consumers and the UAE's financial system.

DUBAI INTERNATIONAL FINANCIAL CENTRE

The DIFC continues to support a growing fintech industry with several firms gaining international funding and introducing products and services to the market.

Fintech Hive Accelerator

The DIFC Fintech Hive, which operates an incubator programme for fintech start-ups, has expanded to include regtech, insurtech and Islamic finance as new areas of focus, with the Dubai Financial Services Authority (DFSA) offering dedicated commercial licences in relation to these. In addition, the DIFC has entered into a memorandum of understanding with the Dubai Islamic Economy Development Centre with the aim of nurturing and mentoring start-ups in the field of Islamic fintech.

The accelerator programme, a key component of the DIFC Fintech Hive established through a partnership with Accenture, is now hosting its second cohort of 22 ventures, double the number of start-ups in the first cohort. The reputation of the accelerator programme has continued to grow with the DIFC receiving over 300 applications for entry into the 2018 cohort, triple the number received in 2017. Unlike in previous rounds, half the applications were from ventures seeking to pursue initiatives in the insurtech, regtech and Islamic fintech sectors. The first cohort will continue to operate concurrently with the 2018 cohort.

The DIFC Fintech Hive has experienced considerable success, with selected start-ups raising more than US\$10 million in 2017, which has led to further interest from third parties; in March 2018, the DIFC entered into a Memorandum of Understanding with Middle East Venture Partners (MEVP) allowing both entities to collaborate in launching fintech initiatives and in the design of future regulations. The MoU also provides a platform for MEVP to explore co-investment opportunities into DIFC's USD100 million Fintech fund, launched in late 2017. June 2018 saw the DIFC partner with the UK's Startupbootcamp, which will see both entities providing guidance and mentorship to selected start-ups.

Most recently, the DIFC signed agreements to collaborate with 10 financial technology companies to support its accelerator and other similar models around the world. The agreements include Accenture's global FinTech Innovation Labs in New York, London and Hong Kong, iE5 in London, Supercharger in Hong Kong and Kuala Lumpur, LATTICE80 in London and Singapore, DICE FinTech Ace in Mumbai, Finance Innovation and Le Swave in Paris, B-Hive in Brussels, Holland FinTech and Bahrain FinTech Bay.

Clifford Chance recently became a proud partner of the DIFC Fintech Hive, offering support on the legal and regulatory side to a number of Hive participants.

DFSA Innovative Testing Licence and network available

A distinguishing feature within the DIFC for fintech is the opportunity for firms to apply for an innovative testing licence (ITL) whether or not a part of the Fintech Hive. Outside of the accelerator model, this provides firms who are ready to start live testing to apply for a bespoke regulatory licence straight from the DFSA, where everything from the types of permissions and waivers required to the application fees to be paid will be assessed on a case-by-case basis by the DFSA's experienced team.

This framework would also permit firms to gain exposure to the DIFC's incumbent financial services industry and seek guidance through the DFSA from its deep international connections. In June 2018 the DFSA entered into a memorandum of understanding with Finance Innovation, France's official financial innovation cluster, and in August 2018, the DFSA announced a fintech collaboration agreement with the Monetary Authority of Singapore (MAS). In addition, September 2018 saw the DFSA enter into a fintech collaboration agreement with the Financial Services Agency of Japan.

However, a firm wishing to apply for an ITL must first apply to be accepted into a cohort. Interested firms are encouraged to apply online for either of the DFSA's two annual cohorts, the current being 1 – 30 November 2018, and 1 – 31 May 2019.

Cryptocurrencies and blockchain

Outside of the DIFC Fintech Hive, the DIFC Courts have also partnered with Smart Dubai to launch a "Court of the Blockchain". The initiative will explore ways in which blockchain-based solutions may assist with cross-border enforcement and collaboration between the DIFC and onshore UAE.

With regard to cryptocurrencies, the DFSA issued a warning statement to investors in September 2017 that cryptocurrency investments should be treated as high risk. The DFSA clarified that it does not regulate ICOs and also that it would not currently license firms undertaking such activities. However, interest from firms engaging in cryptocurrency business to become licensed in the financial free zones remains high. We understand the DFSA is currently conducting internal consultations and is considering a potential licensing regime, which may cover ICOs as part of a broader move towards licensing cryptocurrencies as a form of investment.

Crowdfunding

In August 2017, the DFSA issued a set of rules which apply to crowdfunding platforms wishing to operate in or from the DIFC. These rules are comprehensive and impose a significant set of requirements on crowdfunding operators in the DIFC. Under DFSA conduct of business rules, operators must include detailed disclosures of risks (such as expected failure rates) and 18 other core disclosures on the platform, covering fitness and propriety tests for investments and analysis of business proposals for investment opportunities (while companies raising funds must also adhere to detailed disclosure obligations).

Operators must also conduct pre and post-fundraising monitoring for material changes to business and take steps to stop companies raising funds from other crowd funders. There must also be no regulated and unregulated crowdfunding services by the same entity (which could limit the ability for campaigns to include non-equity benefits, such as first offerings of products). Business continuity plans are also required and operators must ensure, on the debt side, that loan agreements are legally enforceable. In addition, a separate retail endorsement is needed to offer the platform to non-institutional investors. The rules are broadly in line with the UK Financial Conduct Authority requirements for crowdfunding platforms, but do have some additional requirements such as certain caps which apply on investments in the DIFC.

Beehive has been an early success story, gaining a crowdfunding platform operator licence shortly after the regime came into force. We understand the cooperative approach of the DFSA has enabled a smooth transition to DIFC licensing for Beehive and, following its licensing, Beehive has continued to become a regional fintech success story and an increasingly well-recognised investment option and form of financing for SMEs. We expect other platforms to become fully licensed in the coming months.

“ Both the Central Bank and the SCA have issued warnings regarding subscriptions in ICOs and trading cryptocurrencies generally. Specific regulations are expected in the near future from the SCA. ”

CRYPTO ASSETS

Overall, the UAE, like many other jurisdictions is not yet specifically regulating Initial Coin or Token Offerings (ICOs) and other crypto asset-related activities. The exceptions to this have been where the activity pertains, in substance, to other regulated activities, such as the offering of shares/bonds (i.e. certain security tokens) or trading in gold (where the relevant tokens purport to represent interests in such securities). However, while each of the Central Bank and the SCA have previously issued warnings regarding subscriptions in ICOs and trading cryptocurrencies generally, the SCA announced in September 2018 that it plans to regulate ICOs and recognise digital tokens as securities (see “SCA” below).

Previously, one form of commercial licence relating to crypto-business could be obtained in the UAE; a principal/proprietary trader in cryptocurrencies in the Dubai Multi-Commodities Centre (DMCC). The DMCC, a free zone for certain corporations within the jurisdiction of Dubai (onshore), had created a licensing category for principal/proprietary trading in cryptocurrencies, but such licence no longer appears to be available and, in any case, was expressly limited to trading. Brokerage, exchange business and related payment services were excluded. It is currently unclear if such licences may be offered again in the future.

The Government of Dubai announced plans to create emCash in 2017, a cryptocurrency to be pegged to AED designed to permit fast and cheap digital transactions in Dubai. This development reinforces the strong focus of Dubai on adopting technology and becoming the world’s “smartest” city.

At a federal level, the UAE Blockchain Strategy 2021, announced in April 2018, will see 50% of all federal government transactions conducted with blockchain technology by 2021. The strategy is

expected to significantly reduce costs and time spent on transactions. It will be implemented with four pillars in mind: citizen happiness, government efficiency, advanced legislation and global entrepreneurship.

UAE Central Bank

It remains unclear whether the Central Bank intends to regulate “virtual currencies”. The 2017 Central Bank framework for stored value facilities offering certain digital payment services states that “All Virtual Currencies (and transactions thereof) are prohibited”. Following some confusion in the market, the Governor of the Central Bank, issued a statement in February 2017 that the regulations “do not cover Virtual Currency” and “do not apply to Bitcoin or other cryptocurrencies, currency exchanges, or underlying technology such as blockchain”. No action has yet been taken, so far as we are aware, in respect of subsequent cryptocurrency activities taking place in the UAE.

In October 2017, the Governor of the Central Bank was reported in the press to have said the Central Bank considers digital currencies to pose high risks to investors and present money laundering risks. The comments may have sought to clarify that the Central Bank is not regulating a number of digital currency exchanges and ICOs marketed in the UAE.

SCA

As referred to above, the newly launched SCA-administered fintech sandbox, is expected to provide fintechs with the opportunity to test blockchain and crypto-related products and services.

In addition to the sandbox, the SCA has made a recent announcement that regulations will be issued to approve and license ICOs and/or security tokens. Coupled with the proposed sandbox, the SCA has proven itself to be one of the

most forward-thinking regulators both regionally and globally.

After issuing a warning statement on ICOs in February 2018, which cautioned investors that ICO schemes are highly speculative with high volatility and low liquidity, this recent announcement demonstrates a clear desire to formally protect investors. In its initial warning statement, the SCA highlighted a number of risks including (i) that ICOs are not regulated and may be subject to fraud risk, (ii) unclear foreign laws apply and recovery of funds may be extremely difficult, and (iii) the risk/return profile may be difficult to understand and there are no required standards/audits for information provided to investors. We would expect these, amongst various other issues to be addressed in the upcoming ICO regulations, which are also expected to draw from existing SCA securities legislation.

While the regulations have yet to be issued, their implementation will hopefully address uncertainty in this space, especially as the SCA has published notices on the warnings section of its website regarding certain unidentified ICOs and promotion of/dealing in financial products associated with digital tokens.

Blockchain and smart contracts

Dubai has embraced blockchain as a core element of the Smart City Initiative, both through the Dubai limb of the UAE Blockchain Strategy and its support of the Global Blockchain Council.

In common with approaches internationally, the use of blockchain in fintech is likely to be rolled out in a controlled environment initially.

We expect an increased uptake in smart contract development and use in the UAE as a result, being within a relatively small, controlled and tech savvy environment. Automated processes for contract formation and performance, through the electronic implication of

standard terms and systems for operating standard processes being run on blockchain, may also be taken up by international banks in their operations in the UAE, and by local banks that may be equally keen to optimise and adopt international approaches.

Automation in contracts will bring new challenges for UAE laws and regulations, particularly with regard to notarisation or Arabic translation requirements. Extensive testing will need to be built into the operation of such processes to ensure certainty in contractual engagement. The first generation of smart contracts is expected to largely involve contractual wrappers around automated systems. The UAE Law of Electronic Commerce and Transactions may be particularly helpful in matters such as execution and enforcement. There are provisions providing for the recognition of electronic contractual engagement, and which expressly recognise the ability of automated systems to create contractually binding engagements between each other. However, the exclusions within the Electronic Transactions Law may also present challenges. Currently, transactions for land, negotiable instruments and other matters which require legal notarisation (amongst others) are excluded from the operation of the law. Therefore, a broad class of transactions still require wet ink signature, contrary to the intentions behind many smart contract initiatives.

We expect this to be addressed in the near future and, in May 2018, the Dubai Land Department announced it is creating a “Real Estate Self-Transaction” platform for digital transactions in land for 2020.

CROWDFUNDING

While regulated status in the DIFC or ADGM (see our separate highlights boxes) will certainly enhance the profiles of fintechs and their ability to attract customers and investors, the alternative

“Dubai has embraced blockchain as a core element of the Smart City Initiative, both through the Dubai Blockchain Strategy and its support of the Global Blockchain Council. In common with approaches internationally, the use of blockchain in fintech is likely to be rolled out in a controlled environment initially.”

is a limited licensing regime onshore, where firms currently continue to operate largely unregulated. Certain crowdfunding activities could fall within the remit of the Central Bank and/or the SCA, and issuers of credit and securities using the platform will be subject to regulation (for example, the prohibition on UAE LLCs issuing shares to the public). The SCA's 2017 regulations, restricting promotion and introducing activities in respect of securities, could severely affect a number of operations.

It is noteworthy that the 2018 Banking Law recently issued in the UAE now includes the “arrangement” of licensed financial services within licensing scope (see Article 65). This suggests that a crowd-funding platform may require a licence from the Central Bank if it is “arranging” credit facilities – but could also arguably still fall outside when arranging a peer-to-peer financing which, as a private arrangement, the Central

Bank may not separately regulate. We await implementing regulations from the Central Bank to clarify. Rewards and charity-based fundraising could also be restricted by laws regulating the raising of donations in the UAE.

In November 2017, it was reported that the Central Bank Governor informed a banking forum in Abu Dhabi that the Central Bank is considering crowdfunding regulations that may benefit SMEs and in July 2018 the SCA announced that it had plans to work with the OECD to establish a crowdfunding platform for the purposes of funding SMEs in the country. Further, in November 2018 the SCA announced that its board has issued a directive to draft and establish crowdfunding regulations in the UAE based on best international practices. This area is expected evolve rapidly in the near future as the SCA commences work on such regulations and holds industry consultations.

The ADGM has sought to establish itself as a fintech leader not only in the UAE, but in the region as a whole.

RegLab and partnerships

The ADGM RegLab, which has recently taken on its third cohort of ventures, offers a 'Developing Financial Technology Services' (DFTS) licence to fintech start-ups for a limited time, after which they either need to upgrade to a full licence or wind down their activities. The licence is only available to entities operating inside the RegLab.

The ADGM has an impressive set of links to other networks, including a fintech bridge with the Monetary Authority of Singapore and the Bahrain Economic Development Board. The ADGM has recently announced plans to establish a global financial innovation network (GFIN) in collaboration with the UK Financial Conduct Authority, which initially proposed the creation of a global sandbox. At the same time, the ADGM has partnered with the ASEAN Financial Innovation Network to launch the API Exchange, an online global fintech marketplace and sandbox platform for financial institutions. The ADGM has been announced as the first regulatory member of the platform outside ASEAN.

An ADGM digital sandbox has been launched to provide a regulated environment where fintech products and solutions can be experimented with by financial institutions and fintech innovators globally and locally. The sandbox will enable the Financial Services Regulatory Authority (FSRA) to regulate the testing activities that occur in the RegLab. The partnership with the ASEAN Financial Innovation Network will be used to bring together firms across the MENA and ASEAN regions and encourage financial inclusion.

In October 2017, the ADGM announced a partnership with the world's largest start-up accelerator, Plug and Play. The ADGM also launched its own Fintech Innovation Centre, which is in addition to the RegLab and will provide a physical hub for start-ups, designed to promote collaboration and innovation.

Jack Hardman, an author of this report, acts as a mentor for financial regulation to ADGM Reglab participants.

Cryptocurrencies

On 25 June 2018, the ADGM published its comprehensive rules and accompanying guidance to create a regime for operating a crypto asset business, becoming the first regulator in the UAE and one of the first globally to publish a specific rulebook on dealing with virtual currencies. Whilst it will largely cover brokerage, custody and exchange in the top crypto-currencies globally (and not ICOs), the "OCAB" regime provides a unique platform for the regulation of crypto-currency business. Our June 2018 briefing provides further detail.

In addition to the framework referred to above, the FSRA in the ADGM has issued regulatory guidance to clarify for investors that whilst ICOs (or cryptocurrencies) would not be regulated in themselves, elements of certain ICO offerings, which can include activities of operating an exchange, offering securities or units in a fund and dealing in derivatives, may fall within the regulatory perimeter. In such case, the activities would be regulated in the usual way. The FSRA also confirmed that many aspects of ICOs, including spot transactions in virtual currencies, may not be regulated activities and investors must be aware of the lack of regulatory oversight.

Crowdfunding

Following the publication of consultation papers in March and August 2018, the FSRA published its regulations for the operation of private financing platforms in the ADGM (the PFP Regime), together with related amendments to certain ancillary rules in September 2018.

The initial PFP Regime is, at a high level, similar to the DIFC crowdfunding regime – it includes a focus on disclosure of risks, pre and post-funding due diligence of entities raising funds and the creation of an exit facility to give investors the ability to sell their participations to other investors on the same platform (with controls in place to ensure that this only permits trades between existing clients and does not become a trading platform or business in its own right). Like the DFSA rules, a “PFP Prospect” associated with the financing proposal must be a Body Corporate (i.e. no individual borrowers).

The broad definition of ‘Operating a Private Finance Platform’ reflects the ADGM’s PFP Regime launch press release which expressed hopes that the regime helps establish a range of financing solutions for start-ups, private enterprises and SMEs including equity investment, debt financing and trade receivables funding.

There are a few key differences between the ADGM and DIFC regimes. The PFP Regime regulations and related conduct of business rules are generally broader and less prescriptive. The PFP Regime COB rules require that all financing proposals qualify as an “Exempt Offer” – meaning in practice, that there will be limited availability for the financings to be directly available to non-professional investors, although it remains to be seen how the FSRA, fintech entrepreneurs and professional market participants will utilise the regime (for example, whether it will be permissible for appropriately licensed professional investors such as banks to purchase and “pass-down” their investments to retail clients).

In addition, there are other smaller differences between the PFP Regime and the DFSA framework that may lead start-ups to choose one regime over the other depending on their business model. One such difference is the fact that the DFSA permits operators to charge fees for ‘exit facilities’ so long as these merely cover costs and do not seek to make additional income from such facilities. The PFP Regime, on the other hand, does not appear to permit ‘PFP’ providers to charge for any ‘exit facility’ offered.

As the PFP Regime is newly implemented as at the date of writing, with no licensed ‘PFP’ providers yet operating in the ADGM, it is possible the FSRA may refine the regulations further as start-ups begin to apply to operate under the PFP Regime.

It is expected that the FSRA could work with crowdfunding companies going through initiatives such as the ADGM RegLab (described above) to develop the regime and establish a path to becoming a licensed crowdfunding platform in the ADGM. This could encourage new entrants, as seen in the DIFC following Beehive’s successful licensing.

Future Initiatives

In recent months, including at the 2018 Fintech Abu Dhabi Summit, the ADGM has widely publicised its desire to use its fintech initiatives to enhance the financing (including trade finance) options available to SMEs in the country. It is reported that the ADGM is collaborating with the Hong Kong Monetary Authority (HKMA) and Monetary Authority of Singapore (MAS) on a number of initiatives to enhance fintech entrepreneurship, including, amongst others, building a new fintech-driven trade financing platform. Further developments on this and other collaborations between the ADGM, HKMA and MAS are expected in the coming months and the establishment of new platforms or joint support for new initiatives and fintech start-ups could help accelerate the development of the crowdfunding and private financing regime in the ADGM.

BAHRAIN

Bahrain is actively developing a fintech industry involving different governmental authorities. The Central Bank of Bahrain (CBB), the regulator for the financial sector, has entered into MoUs with the Monetary Authority of Singapore and the ADGM. The aim of the MoUs is to facilitate cooperation on innovation projects and regulatory initiatives across the respective jurisdictions. The CBB has also launched a regulatory sandbox to test fintech solutions and is working with local players to develop innovative retail payment systems. Bahrain's Economic Development Board (EDB) is focusing on attracting foreign investments in this sector and, in collaboration with the CBB and numerous other stakeholders, the EDB has established the Bahrain Fintech Bay. With 28 founding partners hailing from both the public and private sectors, the Fintech Bay is intended to provide support to fintech start-ups by facilitating cooperation, accelerator programmes and funding.

Recently the Bahrain Development Bank and Economic Development Board have each announced funds of USD100m to invest in tech start-ups.

The Fintech Bay recently announced the launch of the Global Islamic & Sustainable Fintech Center (GISFC) consisting of local, regional and international members. The aim of the GISFC is to encourage "sustainable, social and responsible innovation" within the Fintech and Islamic finance sectors.

Regulatory sandbox

Following a public consultation process, the CBB launched a regulatory sandbox for fintech companies in Bahrain in June 2017, which was subsequently amended in August 2017. This enables both CBB-licensed financial institutions and other firms to test their products and services. The sandbox application process is open to existing CBB licensees (financial institutions with technologically innovative initiatives) and other companies, whether Bahraini or foreign. The latter may include

financial sector companies as well as technology and telecom companies intending to test an innovative product or service; professional service firms which partner with, or service, financial institutions; or any other type of applicant working within the financial services industry deemed acceptable by the CBB. This sandbox is similar to initiatives in the UAE.

Cryptocurrency

Further to the launch of the regulatory sandbox, referred to above, in June 2018 the CBB granted a regulatory sandbox licence to several firms operating crypto-currency exchanges seeking to be the first licensed cryptocurrency exchanges in the Middle East.

In May 2018, Stellar, which has developed a cryptocurrency called Stellar Lumens (XLM), received a Sharia compliance certificate from a CBB-licensed Sharia board – reported to be the first distributed ledger protocol to receive such certification globally.

Data Protection

In recognising the growing trend of digital payments and, with it, an increase in electronic personal data processing and storage, in July 2018 Bahrain announced a new data protection law. Under the new compliance regime, which is due to come into force on 1 August 2019, certain actions, such as failing to properly process or protect personal data, may incur criminal liability.

E-wallet initiative

The Benefit Company, a Bahraini provider of payment settlement services, has launched the National Mobile Electronic Wallet (BenefitPay), in a joint initiative with the CBB. This allows customers to use their smartphones to make or receive payments without the use of credit or debit cards or cash. The system is still at an early stage of implementation; the intention is for it to be integrated with other payment infrastructures handling retail payments in Bahrain.

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“The Egyptian Government and the Central Bank of Egypt are working closely with ministries and other governmental authorities to develop and encourage fintech companies to integrate into the financial system.”

Crowdfunding

Bahrain adopted an ad hoc regulatory framework for crowdfunding for conventional and Sharia-compliant markets. Requirements include:

- The operator of the crowdfunding platform must have minimum capital of BD50,000.
- Only small and medium-sized businesses with paid-up capital not exceeding BD250,000 can raise funds through the crowdfunding platform.
- Only expert and accredited investors (as defined in the relevant regulations) are allowed to provide financing through this platform. It is unavailable to retail investors, in light of the higher risks implicit in the activity.
- Quantitative limitations are also in place for, amongst other things, the maximum amount which can be borrowed by each borrower and the maximum exposure that each lender might have in relation to a single borrower.

In September 2017, the CBB also modified Module MAE (Markets and Exchanges Module) introducing regulations for equity-based crowdfunding. In particular, the operation of an equity crowdfunding platform is now subject to a licence and is subject to several obligations including, amongst others, the following:

- To carry out a due diligence exercise on prospective equity crowdfunding issuers planning to use its platform;
- To monitor and ensure compliance of its rules;
- To carry out investor education programmes;
- Ensuring the equity crowdfunding offering generally contemplated in the securities regulations statement lodged with the crowdfunding platform operator is verified for accuracy and made accessible to investors through the platform;

- Ensuring that the fundraising limit imposed on an equity crowdfunding issuer is not breached; and
- Appointing a Money Laundering Reporting Officer (MLRO) and comply with the requirements of Module FC of the CBB Rulebook Volume 5 in respect of Anti-Money Laundering and Combating Financial Crime requirements.

An equity crowdfunding issuer must be a duly incorporated entity under the law of the Kingdom of Bahrain, or in case of an overseas equity crowdfunding issuer, under the law of its place of incorporation through certain identified entities are prohibited from raising funds through a crowdfunding platform operator. The following limits apply to an equity crowdfunding issuer being hosted on a crowdfunding platform:

- (a) an equity crowdfunding issuer, excluding entities engaged in real estate projects, can raise up to BD 250,000 or its equivalent amount in other currencies within a 12-month period, irrespective of the number of projects an equity crowdfunding issuer may seek funding for during that 12-month period; and
- (b) an equity crowdfunding issuer which qualifies as an entity engaged in real estate projects can raise up to BD500,000 or equivalent amount in other currency within a 12-month period, irrespective of the number of projects an equity crowdfunding issuer may seek funding for during that 12-month period.

Only accredited investors and expert investors are eligible to register with a crowdfunding platform operator and participate in an equity crowdfunding offer.

EGYPT

There is a growing number of fintech start-ups in Egypt, driven by the Egyptian Government and the Central Bank of Egypt's (CBE) intention to upgrade payment systems and move towards a

cashless economy. The most mature sector is the provision of payment services, mobile cash and smart wallets. In addition, in April 2018, Egypt's first blockchain-focused incubator opened in collaboration with Egyptian firms BM, Novelari and zk Capital.

Mobile wallets

In 2016, the CBE issued new regulations for cashless payments using smartphones. Only licensed banks can apply to provide mobile wallets and to act as an issuing bank to take cash deposits in exchange for issuing electronic money, but fintech start-ups can work in partnership with the banks to provide the necessary infrastructure and technology. These services are available to banked and unbanked customers and can be used to transfer money, pay telephone and other utility bills, and make donations. Mobile wallets are regarded as consumer-friendly and easily accessible.

Payment services

Egypt has seen widespread growth in online payment gateway services as fintech companies act as payment service providers for merchants. They facilitate cashless financial transactions between merchants and end-users/consumers and enable merchants to send, receive and manage financial data and send it to banks. Some of the online payment gateway providers offer card payment instalment plans to card users/holders on behalf of a bank, which enables merchants to track and settle all transactions.

Looking ahead

The Egyptian Government and the CBE are working closely with ministries and other governmental authorities to develop and encourage fintech companies to integrate into the financial system. In February 2017, the President issued legislation setting up the National Council for Payment. Its members include the President, the head of the CBE and the

head of the Financial Supervisory Authority. Its role is to promote the move towards cashless payments. An e-commerce law has been under discussion, and a wave of financial regulatory reform to respond to the growth in digital credit lending and crowdfunding is expected to be introduced.

Cryptocurrencies

The Egyptian Grand Mufti has stated Bitcoin is forbidden under the principles of Islam. One of the issues he identified with the cryptocurrency is that it is not under the scrutiny of a centralised or specific authority and compared it to gambling, noting that it can harm individuals as well as entities.

Magdy Ashour, a counsellor to the Grand Mufti, issued a Fatwa (an authoritative but non-binding Islamic legal opinion) that Bitcoin should not be used in transactions since it had no monetary cover by the Central Bank of Egypt (CBE) and that it may be used for terrorist financing. Additionally, in December 2017, the Head of the Egyptian Financial Supervisory Authority (EFSA) stated that the trading of Bitcoin is illegal in Egypt.

JORDAN

Fintech in Jordan is in its infancy, but is slowly growing. Local firms are implementing systems to settle bills electronically and make payments through smartphones. Meanwhile, the Jordanian Government is seeking to reduce the amount of cash in circulation by digitising Jordanian money. It is actively encouraging the introduction of fintech in various public and private sectors in Jordan, and is pushing public and private entities to implement and apply fintech in their day-to-day services. The Central Bank of Jordan (CBJ) is embedding fintech products into governmental services and the banking sector. This creates many opportunities for fintech companies to set up in the country.

“The Central Bank of Jordan is embedding fintech products into governmental services and the banking sector. This creates many opportunities for fintech companies to set up in the country.”

Regulation

Under the Electronic Transactions Law 4, introduced in 2015, e-payment is an acceptable method of payment and electronic signatures are an acceptable means of concluding commercial transactions. The CBJ regulates e-payment and other forms of online payment services.

In anticipation of the rise of fintech in Jordan, the CBJ has gradually issued regulations and instructions for fintech providers and the use of fintech, particularly by local banks and financial services providers. A new regulation and a number of new instructions have been issued by the CBJ recently that aim to regulate third-party payment processors. These include the protection of e-payment users' data and personal information, the introduction of a minimum share capital for e-payment service providers, and the authority for foreign companies to exercise e-payment transactions in Jordan.

Madfoo'atcom

To encourage Jordanians to start using electronic payments, the CBJ partnered with fintech company Madfoo'atcom and launched eFAWATEER.com in 2015. This is an electronic bill presentation and payment system (EBPP). It is owned by the CBJ and managed and operated by Madfoo'atcom. It enables consumers to view and pay all types of bills electronically through local banking channels, including internet banking, ATMs and mobile banking.

The CBJ is overseeing the application of this system to ensure that all relevant parties are complying with its regulations. It requires all banks to use eFAWATEER.com as the only electronic means of allowing customers to view and pay their bills from their bank accounts.

Mobile wallets

The majority of Jordanians do not have bank accounts and use cash to settle their bills and make payments. However, the CBJ aims to provide the "unbanked" with access to financial services, and has introduced an electronic mobile wallet that enables people to make payments from their mobile wallets to any other person with a mobile wallet. Mobile wallets can also be used to withdraw money from ATMs, pay bills and make person-to-person or person-to-merchant transfers. Customers do not need a smartphone or a bank account, and can open a mobile wallet at any local telecoms operator or its licensed agents.

Cryptocurrencies

In February 2014, the CBJ issued a circular prohibiting the dealing of cryptocurrencies and, in particular Bitcoin. The CBJ reiterated the same position this year by issuing a new circular, which also included Ripple and Ethereum in the prohibition. The circular prohibits any form of dealing or investment, be it direct or indirect.

SPOTLIGHT ON CRYPTO

There has been a contrasting approach to regulation of digital assets in the Middle East, with a continually evolving regulatory environment. Whilst some jurisdictions have attempted an outright ban on ICOs and cryptocurrencies such as Egypt, others are actively encouraging licence applications for operating cryptocurrencies, such as the ADGM Free Zone and Bahrain, and planning to introduce regulations covering ICOs, such as the UAE Securities and Commodities Authority.

In the Middle East, specific considerations apply regarding whether certain crypto-assets are contrary to applicable Sharia laws (being potentially too speculative or uncertain). In addition to concerns around AML, CFT and consumer protection shared by regulators globally, the use of cryptocurrencies to evade economic sanctions is a particular concern in the Middle East and can add to regulatory unease.

The most common regulatory view, however, remains that investors should be warned against investing in ICOs, being unregulated investments against which investors will have no recourse or promise of any benefit. This was most recently pronounced by Saudi Arabia in August 2018. Similarly, only the ADGM free zone has looked to specifically regulate the trade and custody of cryptocurrencies and in this case reducing its permit to the few cryptocurrencies most frequently traded globally. The complete list is not published. Our June 2018 briefing provides further detail.

As such, crypto-trading and ICOs across the Middle East have typically been conducted through offshore platforms not specifically marketed in the region. No regulator has departed from the view that security tokens may attract traditional securities regulation and pure cash credits would be covered by payments/wallet regulations (where in force).

MOROCCO

Although still in its infancy, fintech has continued to grow as a sector in Morocco and a legal framework, which would allow financial technologies to thrive in the country, is gradually emerging.

E-wallets

Morocco has adopted a legal framework to regulate the use of mobile payments in the jurisdiction. The new law and accompanying circulars introduces the notions of “payment institutions” and “payment agents”. A number of banks have quickly responded to the new framework by launching e-wallets, such as “We Pay” by CIH Bank and “BPay” by Banque Populaire. Non-banking institutions may also implement mobile payment initiatives, provided they obtain approval from Bank Al Maghrib (the Moroccan central bank).

Cryptocurrencies and blockchain

In November 2017, the Moroccan Exchange Office issued a press release indicating that dealing in cryptocurrencies constituted a breach of applicable exchange regulations, and anyone dealing in such currencies would therefore be subject to fines and penalties. In that same month, the Ministry of the Economy and Finance, Bank Al Maghrib and the Moroccan Capital Markets Authority issued a joint press release to warn the public on the risks of dealing in cryptocurrencies.

Although the exact legal status of cryptocurrencies is unclear, the underlying blockchain technology is expected to be adopted by various institutions, and a white paper on the use of the technology has been published by the Association of Users of Information Systems of Morocco (AUSIM).

Crowdfunding

Crowdfunding is not yet regulated in Morocco. However, in March 2018 a draft law on the matter was issued to the Government General Secretariat for consultation. The draft establishes a regulatory framework for crowdfunding activities and sets requirements for crowdfunding platform managers, outlines necessary authorisations, and specifies the terms under which such transactions should be conducted.

“ Fintech has had a significant impact on the Lebanese financial sector as local banks have introduced mobile and online banking, payment and deposit platforms, and money transfer platforms. ”

LEBANON

Fintech has had a significant impact on the Lebanese financial sector as local banks have introduced mobile and online banking, payment and deposit platforms and money transfer platforms.

The Lebanese central bank, Banque du Liban (BDL), regulates electronic banking while the Capital Markets Authority (CMA) regulates crowdfunding. The Lebanese authorities are keen to develop fintech activity while ensuring financial security and stability, a balance which is not easy to maintain in the jurisdiction.

Regulation

Specific BDL regulations from 2000 (Circular 69) cover all the operations and activities concluded, performed or promoted through electronic means by banks and other financial institutions; these require a specific licence. Circular 69 prohibits the issuance or use of “electronic money” by any party.

Circular 69 also prohibits the performance of banking operations via mobile and fixed electronic devices amongst customers of different banks, unless these operations are limited to the receipt of transfer requests from the customer, and provided that the operations are not instantly performed through the application or software used by the customer’s devices but in the usual and conventional way (i.e. through the SWIFT system adopted amongst banks).

Non-banking institutions can obtain a licence for electronic fund transfer operations. The requirements permit close and continuous monitoring by BDL of the ownership of the licensed institutions. BDL also requires that the institution be in possession of an efficient internal control system to face current and prospective risks, as well as an accounting system linked to the approved electronic transfer system (in a way that permits the electronic retrieval of all incoming and outgoing transfers).

BDL requires that, for the admission of an electronic signature of the client, the client enters into an agreement with the institution which includes the likely risks associated with the e-signature and procedures to be followed to ensure safety.

Crowdfunding

The CMA regulates crowdfunding as “any activity directed towards the general public aimed at funding SME or start-up companies through public investments in various equities or shares in these companies”.

In order to obtain a crowdfunding licence, the CMA will conduct “Know Your Customer” (KYC) verification and investigate relations between the crowdfunding operation (the institution) and the underlying companies. The institution must also demonstrate compliance with several systems and control requirements and provide documents on technical rules for its electronic systems.

Limiting the institution’s role to facilitating the process of securing the necessary crowdfunding for investment, the CMA prohibits it from providing advice of any kind to the investors or the company; receive deposits of any kind whatsoever; use the electronic platform to offer any financial products or derivatives to the public, other than equities and shares; or to trade, directly or indirectly, in equities and shares on the electronic platform designed to provide the crowdfunding service.

Before granting a company access to its electronic platform, the institution must ensure that the fundraising company submits corporate identification documents, audited financial statements, a feasibility study covering the period of the next three years, a term sheet to be presented to the investor identifying the basic terms of the investment, and an investment agreement to be signed with the investor. Placements shall be deposited in an escrow account to be released upon reaching the targeted capital, or otherwise returned to the investors with the accrued interest.

Cryptocurrencies

In February, the CMA reiterated the prohibition on issuing electronic money or promoting or dealing (directly or indirectly) with electronic currencies for their own account or for the account of their clients. The prohibition was previously set by BDL and applies to all institutions authorised to carry on securities trading. However, in October 2017, the Governor of BDL announced plans for the central bank to launch its own digital currency.

The CMA also made an announcement warning against purchasing, holding or using virtual money and, particularly Bitcoin.

KUWAIT

A small number of fintech start-ups are operating in Kuwait, mainly in the payments sector, and there have been limited regulatory developments. However, to address the legal challenges and new opportunities created by the digital revolution, the Kuwaiti national assembly issued Law No. 20 of 2014 (Regarding Electronic Transactions) (the ET Law) in January 2015.

The aim behind the ET Law is to emulate traditional paper-based transaction processes in a regulated, efficient and secure digitised system. The ET Law governs electronic contractual agreements and electronic signatures, and covers electronic payments. Under the ET Law, no person is obligated to accept or approve electronic transactions without their consent. Consent may, in certain instances, be implied by the actions of individuals. However, consent and approval of electronic transactions must be explicit and unequivocal with regard to governmental entities and authorities.

Electronic payments

Electronic payment is an acceptable payment method so long as it complies with the ET Law and the provisions set out by the Central Bank of Kuwait (CBK) in Law No. 32 of 1968 (the Banking Law). The ET Law also states that financial institutions carrying out electronic payments must ensure the safety and security of customer services and maintain banking confidentiality. The CBK is given the authority to issue instructions to banking and financial institutions under its jurisdiction in relation to the regulation of electronic payments.

Electronic signatures

Under the ET Law, an electronic signature is binding and admissible as evidence if it complies with the provisions of Law Decree No. 39 of 1980 on Evidence in Civil and Commercial Matters, and is certified by an electronic certification entity approved by the local authority. The relevant authority will specify the standards required and set the technical specifications.

Blockchain

In May 2018, Kuwait Finance House became the first Kuwaiti financial institution to adopt blockchain by utilising Ripple's blockchain-based platform to enable faster transactions.

Privacy and data protection

Personal data must be protected by both governmental authorities and non-governmental bodies, which are also required to take certain steps to ensure the confidentiality of such information. The ET Law also imposes responsibilities on entities that collect personal data. They may not disclose any personal data or information which is kept or documented on electronic data processing systems related to a person (including financial status) without the approval of the person to whom the data relates, or after obtaining a court order granting permission to disclose the information. On obtaining consent, entities responsible for the collection of personal data must ensure that the data is used for the purpose for which it has been collected, is correct and updated regularly, and is sufficiently protected from loss or disclosure. It is unclear, at this stage, whether "personal data" relates to individuals only, or also extends to corporate entities.

Regulatory Sandbox

In November 2018, the CBK announced the launch of a regulatory sandbox for start-ups, following a similar approach to regulators in other jurisdictions in the region that are featured in this report. The CBK sandbox has yet to be implemented, but is expected to see participant start-ups progress through four stages across a one-year period, before being assessed on their readiness for entry into the wider market.

OMAN

The fintech sector continues to develop in the Sultanate of Oman. In line with consumer demand, financial institutions have taken a cautious but optimistic view towards fintech. While fintech has the potential to alter and grow the financial services sector in Oman, progress has been slow due to a lack of consumer awareness and confidence.

“The aim behind the ET Law is to emulate traditional paper-based transaction processes in a regulated, efficient and secure digitised system.”

“Any services provided by financial institutions (including transactions implemented using fintech) will also be subject to the Consumer Protection Law, which sets down rules designed to balance the respective rights and obligations of consumers and their suppliers with an appropriate allocation of any risks.”

It is still commonplace for people in Oman to settle their payments and bills with cash at banks or teller machines. There are, however, concerted efforts underway to make Oman a cashless society; Thawani Pay, the first Omani fintech company, has recently been established. The company is a mobile digital platform through which customers are able to undertake e-payments and benefit from business analytics services. In addition, major banks in Oman are investing in new technologies and services in an effort to enhance user experience, examples of which are showcased each year at the annual Muscat-based New Age Banking Summit.

Blockchain

In April 2018, the Omani government announced a blockchain collaboration initiative with the Oman Banks Association, via a government-owned entity called Blockchain Solutions & Services.

This, along with the Blockchain Symposium held in Muscat in November 2017, underlines the state-led emphasis on exploring blockchain uses in the country.

Regulation

In the absence of specific fintech laws, existing legislation is applicable. This includes the Commercial Code of Oman, the Civil Transactions Law of Oman, Omani Banking Law, the Electronics Transactions Law (ETL), the Anti-Money Laundering and Terrorism Law (AML Law) and the Consumer Protection Law. Notwithstanding the possible application of these laws to fintech transactions, there is as yet no clear case law that provides clarity in terms of how a particular fintech transaction may be considered, as it is not expressly covered under the existing laws.

All fintech transactions are subject to the ETL, which governs all forms of electronic transaction. Any act or contract drawn up, fully or partially, using electronic information communicated via electronic means is an “electronic transaction” under the ETL.

This, therefore, means that fintech transactions such as payments made through the use of apps or e-wallets, would be subject to the ETL. The ETL requires all electronic transactions to follow certain evidentiary and

authentication standards and security measures. It also places a requirement on the Information Technology Authority, in collaboration with the Central Bank of Oman, to issue procedures and systems for organising electronic payments.

The AML Law also has implications for fintech institutions in that it sets out certain procedures which must be followed by financial institutions in all their transactions (including fintech transactions) to prevent money laundering and terrorism financing.

Finally, any services provided by financial institutions (including transactions implemented using fintech) will also be subject to the Consumer Protection Law, which sets down rules designed to balance the respective rights and obligations of consumers and their suppliers with an appropriate allocation of any risks. While aspects of fintech are regulated by these general laws, there is a need for a comprehensive regime which governs fintech in Oman. There is no indication that a regulatory initiative for the fintech sector is on the horizon.

SAUDI ARABIA

Based on economics and demographics, Saudi Arabia has the potential to be a future fintech hub. Saudi Arabia is the largest economy in the MENA region and has a large, young population (around half are under the age of 24) and one of the highest penetrations of smartphones in the world (65%). It is also generally accepting of new technologies and innovative ways of doing business. Saudi Arabia’s “Vision 2030” was launched in 2016, and is intended to set out the blueprint for the development of the Kingdom over the next decade. One of the key aims of Vision 2030 is to reduce Saudi Arabia’s reliance on oil by developing other sectors of its economy. Technology is at the heart of this strategy.

SAMA-approved payment systems

The Saudi Arabian Monetary Agency (SAMA), the Saudi banking regulator, is very conscious of the need to adopt fintech initiatives. The Financial Sector Development Program is an initiative under Vision 2030 which aims to permit fintech companies, alongside SAMA-licensed banks, to provide financial services in the Kingdom.

There are no specific regulations in KSA at present that govern e-payment systems or mobile wallets, but a number of operations in this area appear to be operating under the supervision of SAMA.

SAMA has a long history of supporting electronic payment systems over the past 30 years. Building on the launch of the Saudi Payment Network (SPAN) in 1990, the real-time transfer system SARIE in 1997 and the now widely used Electronic Bill Presentment and Payment (EBPP) system SADAD in 2004, in October 2018, an e-wallet called “STC Pay” was launched with SAMA’s blessing. STC Pay is operated by Saudi Telecom Company (STC) and enables users to send, receive, spend and manage their money via a smartphone.

Global ambitions

One important element of Saudi Arabia’s fintech ambitions is its willingness to invest in fintech ventures throughout the world. The principal vehicle for these investments is the Public Investment Fund (PIF), which was relaunched as part of Vision 2030 as the world’s largest sovereign wealth fund. One of the PIF’s flagship investments was its 2017 investment in the US\$100 billion “Softbank Vision Fund” established by Softbank. The Fund already holds investments in consumer tech firms such as Uber and DoorDash, chip designer ARM Holdings and software companies Slack and Cohesity.

Cryptocurrencies

In August 2018, it was reported that the Standing Committee for Awareness on Dealing with Unauthorised Securities Activities in the Foreign Exchange Market (headed by, amongst others, SAMA) issued a statement warning citizens that cryptocurrencies were not official currencies in the Kingdom and were unregulated. Further guidance on this statement has yet to be provided by the Saudi authorities.

Blockchain settlement initiative

Despite the negative stance towards cryptocurrencies, as referred to above, in February 2018, SAMA announced an agreement with Ripple to establish a blockchain platform to settle payments between banks in Saudi Arabia. The initiative is currently in the pilot stage.

Blockchain on STC cloud

As an example of established Saudi companies adopting fintech initiatives, in October 2018, STC announced the launch of blockchain to its STC cloud service, enabling users to build private blockchains and experiment with coding on the blockchain in a test environment without the need for any infrastructure investment.

Fintech Lab

In January 2018, the Saudi Arabian Capital Market Authority (CMA) issued the “Financial Technology Experimental Permit Instructions”. These create a sandbox environment by permitting applicants to apply for a “Financial Technology Experimental Permit” to test a fintech product. The instructions state that the permit will be granted for two years, subject to extension by the CMA in exceptional circumstances. In July 2018, we understand that permits were issued by the CMA to two companies providing crowdfunding services, Manafa Capital and Scopeer. The CMA is actively encouraging applications for permits in a “second batch” of applications which it will consider towards the end of 2018.

Future initiatives

An important element of Saudi Arabia’s fintech ambitions is the King Abdullah Financial District, a massive new business area in the centre of Riyadh which is almost complete. It is expected that fintech will be at the heart of the new district, as is the case for its regional competitors, Dubai’s DIFC and Abu Dhabi’s ADGM.

It is also expected that there will be regulatory initiatives in the fintech sector that will enable and encourage further developments. Following SAMA’s launch of the “Fintech Saudi” initiative in May 2018, which, amongst other objectives, aims to support SMEs in the fintech space, we understand there are plans in discussion between SAMA and the CMA to create a regulatory sandbox to promote the testing of innovative products.

It is therefore clear that there is a willingness and ambition to embrace the fintech sector, as well as the economic and social fundamentals to facilitate its expansion.

“Any services provided by financial institutions (including transactions implemented using fintech) will also be subject to the Consumer Protection Law, which sets down rules designed to balance the respective rights and obligations of consumers and their suppliers with an appropriate allocation of any risks.”

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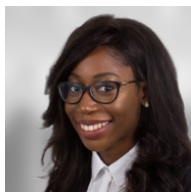
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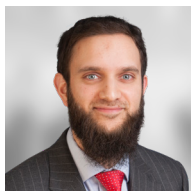
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