

inBrief

**ADGM Distributed Ledger Technology Foundations Regulations 2023**

By Abdus Samad & Luca Rayes Palacín | 13 March 2024

Introduction

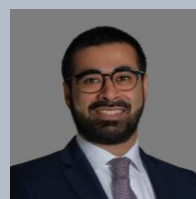
Following the issuance of Consultation Paper 3 of 2023 and the consultation process that followed, on 2 October 2023 the Abu Dhabi Global Market (ADGM) enacted the DLT Foundations Regulations 2023 (the **Regulations**), aimed at providing a regulatory framework for the creation and operation of specialised foundations for distributed ledger technology (DLT) and decentralised autonomous organisations (DAO).

Background

Despite growing global demand for a licensing regime for an entity that can hold and manage digital assets, DLT networks, blockchain and token issuance, there has been a lack of options (prior to the Regulations) to promote DAO in a manner that provides legal certainty while supporting the concept of decentralised governance. The Regulations are a first step in bridging this gap by providing a legal entity that supports a decentralised operating model.

DLT Foundations differ from the already-established ADGM foundations regime (one which has been increasingly relied upon for wealth management and legacy planning) in that they cater to foundations established for a particular purpose, being: *to use, deploy, develop, facilitate or support DLT and/or the issuance of tokens*.

However, DLT Foundations retain many of the corporate governance and statutory requirements of the already existing traditional ADGM foundations regime. This includes the requirement to: (a) in most cases and subject to very limited exceptions, appoint a company services provider (CSP) with which a registered address must be maintained and (b) prepare and file a charter setting out the specific rules regarding governance, rules for token issuance (including types, purposes and rights attached to tokens) and provisions relating to the DLT Foundation's assets (this is not an exhaustive list). Interestingly, the Regulations also include provisions allowing for the migration of DLT Foundations to and from ADGM, subject to certain criteria.

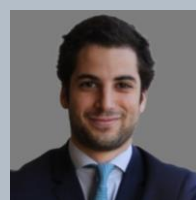
The Authors**Abdus Samad**

Partner

asamad@afridi-angell.com

Tel: +971 4 330 3900

Abdus Samad (Samad) advises foreign and UAE clients on general corporate, commercial and other matters relating to the conduct of business in the region. Samad has extensive knowledge and experience in cross-border matters including complex acquisitions and divestures, joint ventures, restructurings and reorganisations. Samad has been ranked as "Rising Star" for commercial, corporate and M&A, in Legal 500 EMEA.

**Luca Rayes Palacín**

Associate

lrayespalacin@afridi-angell.com

Tel: +971 2 610 1010

Luca specialises in corporate and commercial transactions, fund finance and formation, mergers and acquisitions, and joint ventures, offering comprehensive legal expertise.

His practice extends to regulatory advice, compliance, corporate governance, and boardroom advisory. Notably, a substantial portion of his work carries an international dimension.

Governance

The key office-holders of a DLT Foundation are council members, guardians, and tokenholders:

- i. There must be a minimum of 2 and no more than 16 council members who are responsible for the management of a DLT Foundation's affairs. Council members are also granted certain statutory veto rights which cannot be narrowed by the charter (being the primary constitutive document) of a DLT Foundation.
- ii. A guardian is appointed by the founder or council members and is responsible for ensuring compliance with a DLT Foundation's objectives.
- iii. If the DLT Foundation issues tokens, it shall have tokenholders. The Regulations specify that a tokenholder is not, merely by virtue of being a tokenholder, liable for any acts and/or omissions of the DLT Foundation. Subject to the provisions of the charter, tokenholders may be able to approve or reject certain matters concerning the affairs of a DLT Foundation.

DLT Foundations must also keep accounting records and prepare annual accounts, which must be audited by an independent auditor, published on the DLT Foundation's website, and lodged with the ADGM Registration Authority. DLT Foundations must also conduct periodic security audits of the DLT Foundation's data protection and security systems and share the results of such security audits with the ADGM Registration Authority.

Looking Ahead

The Regulations are yet another step taken by ADGM to provide an adaptable framework for non-traditional business sectors.

Whilst we can expect the ADGM to reply to industry developments in the form of amendments and/or subordinate regulations, the present framework not only provides a structure for DLT Foundations but also a supportive regulatory system with sufficient flexibility for DLT, DAO and ADGM's regulatory ecosystem to grow together with the market. ■

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