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NFTs, Art, & Law in the Middle East

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Middle East Art Scene

The Middle East, and the United Arab Emirates in particular, has an ever evolving and rapidly growing art scene witnessed through, among other things, Art Dubai, Abu Dhabi Art, Alserkal Avenue, Barjeel Art Foundation, and most recently, and also the arrival of international galleries such as Galleria Continua (Burj Al Arab), and Perrotin Art Gallery (DIFC). The territory is attracting both regional and international creators and buyers as Dubai now turns into a crypto and NFT hub, demonstrating itself as a world leader in the digital art world. Dubai's technologically advanced environment, along with the ease of conducting business marks it as an ideal space for blockchain and crypto companies. Poised centrally between the East and the West, Dubai is also notably becoming a hub for both the physical and digital art world, from Christie's hosting Dubai's first ever art auction in 2006, to Art Dubai opening an entire digital pavilion exclusively for digital mediums and the NFT art scene in March 2022.

NFT's explained

A non-fungible token ("**NFT**") is a unique digital asset created on a blockchain via code. They can be created, bought, and sold on a number of marketplaces, including but not limited to, Binance and OpenSea. NFT's are unique or non-fungible in the sense that it is a one-of-a-kind piece that cannot be replaced for another asset of equal value, similar to a physical piece of art such as Jean-Michel Basquiat's 1982 piece '*Untitled*' or Roy Lichtenstein's 1964 piece '*Nurse*'. An NFT however, unlike with physical art, provides a digital certificate of authentication/ownership stored on the blockchain and linked to an underlying physical or digital asset. In contrast fiat money such as the United Arab Emirates dirham, or the digital currency Ethereum are fungible, meaning they can be exchanged for another bill or coin of equal value.

NFT's can represent any asset, whether an online-only virtual asset, or a real-world physical asset. Andrés Reisinger, an Argentinian artist creates NFT furniture, with one collection raising near to \$450,000 – a virtual furniture collection available to use solely on the metaverse. Reisinger debuted his first ever public



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art piece, a phygital collection titled 'Sun/Leaf' in Dubai last month, a true testament to the Middle East's rapidly flourishing and welcoming art scene.

One of the most crucial advantages the NFT rise has provided is to the creators of the original works. Creators are able to earn royalties every time their work is re-sold on the secondary market by way of digital smart contracts linked to the underlying asset. Although beneficial, this in itself creates numerous legal obstacles, including but not limited to intellectual property ("IP") rights, where a third-party mints and sells a NFT linked to an asset such as artwork created by someone else. A recent example of this, specifically alleged trademark infringement, involves Hermès, the French luxury design house. The first from the 100-piece NFT collection 'MetaBirkin NFTs' sold by the artist Mason Rothschild depicting illustrations of the renowned Hermès' Birkin bag sold for \$42,000. Hermès claimed that Rothschild did not have authorisation to use its trademark and is therefore unlawfully profiting from the unauthorised use of the trademark. The outcome of the lawsuit remains to be seen, but the case is an imminent reminder that NFT's are not exempt from the IP legal framework and regulations that are currently in place.

UAE Crypto Business Legal Environment

Proving to be a leading regulator in the space, Abu Dhabi and Dubai have both created frameworks governing the relationship of crypto assets in the market. The Abu Dhabi Global Market ("ADGM"), a financial free zone within Abu Dhabi, and notably one of the first jurisdictions worldwide to introduce cryptocurrency regulations, regulates what they have named 'virtual assets' which definition includes cryptocurrencies, digital assets, fiat coins, and derivatives/funds. Most recently, on 21 March 2022, the AGDM released a consultation paper titled 'Proposals for Enhancements to Capital Markets and Virtual Assets in ADGM' in which they propose guidelines for NFT trading. The consultation paper suggests that NFT's are intellectual property rather than "specified investments or financial instruments" and puts forward that NFT marketplaces may be run by virtual asset custodians and multilateral trading facilities. The consultation paper makes clear that the Financial Services Regulatory Authority is not currently recommending formal regulatory framework for NFT's.

The Dubai Multi Commodities Centre ("DMCC") also offers a comprehensive framework and four types of licenses for NFT, crypto, and metaverse entrepreneurs to trade and conduct business in the space. Companies operating within this field in the DMCC freezone enjoy a structured regulatory framework allowing for transparency and ease of business.

Most notably, last month Dubai established the Virtual Asset Regulatory Authority ("VARA"). VARA will be responsible for licensing and regulations in relation to Law No. (4) of 2022 Regulating Virtual Assets in the Emirate of Dubai ("Virtual Assets Law") which was issued on 11 March 2022. The Virtual Assets Law will be applicable throughout the Emirate of Dubai, including special development zones and free zones, but excluding the Dubai International Financial Centre which has its own regulatory framework on investment tokens.



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The Virtual Assets Law defines 'Virtual Tokens' as "a digital representation of a set of rights that can be digitally offered and traded through a Virtual Asset Platform". The Virtual Assets Law however, has not specifically defined which assets are included or excluded, and it remains to be seen through future regulations and guidance issued by VARA whether NFTs will be captured under the scope of the Virtual Assets Law.

The Virtual Assets Law prohibits a person from engaging, without the authorization of VARA, on specific activities related to virtual assets including:

- i. Operating and managing a virtual asset platform;
- ii. Providing exchange services between fiat currencies and virtual assets;
- iii. Providing exchange services between one or more forms of virtual assets;
- iv. Providing transfer services in relation to virtual assets;
- v. Providing safekeeping, management, and/or control services for virtual assets;
- vi. Services relating to virtual asset wallets;
- vii. Services relating to the trading and offering of Virtual Tokens.

The Virtual Assets Law stipulates that those intending to conduct the above activities in Dubai must be incorporated under a legal form recognised by one of the Dubai licensing entities. The publication of the Virtual Assets Law positions Dubai as a global leader in the virtual asset space and signifies its inclination to embrace cryptocurrency and blockchain. It is a vital and welcomed step to grow the space while protecting investors interests.

In brief, the UAE is offering plenty of solutions to operate a crypto and NFT business by adapting to a fast-evolving environment and providing clear and thorough regulations. The UAE has proven its ability to put into place inclusive regulations and frameworks, providing immense value, both financial and otherwise, for the blockchain, crypto, and NFT businesses setting up in the country. The UAE's straightforward tax and legal regime simplifies considerably, the very real concerns and obstacles that crypto entrepreneurs face in other jurisdictions, making the UAE an ideal and attractive location to set up a corporate base.

Notes to editors:

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