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FIRM NEWS

Akshat Pande, Managing Partner, Alpha Partners
invited as speaker at 2024 Horasis India Meeting in
Athens



The 2024 Horasis India Meeting is co-hosted by the Hellenic-Indian Chamber of Commerce and Economy and the Confederation of Indian Industry (CII) drawing together 250 of the most senior members of the Horasis Visions Community.

Horasis will hold the 2024 Horasis India Meeting in Athens, Greece over 15-16 September. The meeting offers an ideal platform for senior business leaders from India, Greece and the world to explore and foster cooperation, impact investing, and sustainable growth. Of particular interest is the facilitation of meetings with Indian innovators and entrepreneurs to explore beneficial new ventures, using Athens as a hub to invest in Greece and Europe.

Akshat Pande will be part of the Panel with the following theme:

India and Greece: Navigating towards Hope

The world is facing a tumultuous time – its economies are volatile, and most nations face economic downturn. Still, India is a beacon of hope, its economy is growing at a fast pace; relatively, so is Greece. What is India's and Greece's promise to the world? How might entrepreneurs from India and Greece navigate towards hope?

ARTICLES & UPDATES

VARA Law: A Comprehensive Overview of Emirate's Virtual Asset Regulation

Introduction

The Emirate of Dubai has introduced a significant regulatory framework to govern Virtual Assets. Enacted by the Dubai Virtual Asset Regulatory Authority (“**VARA**”), this law establishes a comprehensive legal and regulatory structure for the management, issuance, and trading of Virtual Assets (*defined below*) within the Emirate. The VARA laws and regulations address key aspects such as licensing, compliance, and oversight, ensuring that Virtual Asset services are conducted with transparency, security, and adherence to international standards. This regulatory framework is designed to foster innovation while maintaining rigorous standards for investor protection and market integrity.

Law No. (4) of 2022¹, regulating Virtual Assets in the Emirate of Dubai (“**VARA Law**”) defines ‘Virtual Asset’ as a digital representation of value that may be digitally traded, transferred, or used as an exchange or payment tool, or for investment purposes. This includes virtual tokens, and any digital representation of any other value as determined by the VARA. Further the Virtual Assets and Related Activities Regulations, 2023² provide for the regulatory framework governing Virtual Assets and all related activities in the Emirate, including the general and specific supervision and enforcement powers of VARA.

Scope and objective of VARA Law

VARA Law applies to the Virtual Asset services provided in all zones across the Emirate, including Special Development Zones and free zones but excluding the Dubai International Financial Centre. The VARA Law was introduced with the objective to promote the Emirate as a regional and international hub for Virtual Assets and related services and to increase awareness on investment in the Virtual Asset services and products sector, and encourage innovation in this sector.

Functions of VARA

VARA is the competent entity in the Emirate in charge of regulating, supervising, and overseeing Virtual Asset services. The functions of VARA include:

- Development of the general policy and the strategic plans related to regulating Virtual Asset services in the Emirate, as well as dealing and trading in Virtual Assets in the Emirate.
- Regulating, supervising, and overseeing the issuance, offering, and relevant disclosure processes of Virtual Assets and virtual tokens.
- Regulating, and issuing permits to, Virtual Asset Service Providers (“**VASP**”) in accordance with the requirements, procedures, and rules.

¹ https://rulebooks.vara.ae/sites/default/files/en_net_file_store/VARA_EN_338_VER1.pdf

² <https://rulebooks.vara.ae/rulebook/virtual-assets-and-related-activities-regulations-2023>

Pre-requisites to conduct Virtual Asset Activity (“VA Activity”)

Any person desirous of conducting VA Activity shall have to fulfil the following requirements:

- No person may conduct any VA Activity in the Emirate without obtaining a permit from VARA.
- A person wishing to conduct the VA Activity must set up his business in the Emirate and must have one of the legal forms approved by the competent commercial licensing authority in the Emirate.

Licensing Requirements

No entity may carry out any VA Activity by way of business unless it is:

- authorised and licensed by VARA for the VA Activity; or
- an employee carrying on or otherwise facilitating a VA Activity on behalf of its employer that is licensed by VARA; or
- an exempted entity.

All entities wishing to carry out one or more VA Activities in the Emirate must seek authorisation from VARA prior to conducting any VA Activity. All entities shall apply for, obtain and maintain a license issued by VARA in order to be permitted to carry out each VA Activity that it will conduct in the Emirate. VARA has the sole and absolute discretion to grant, suspend or revoke a license.

License Application Fee

The license application fee for each VA Activity ranges from a minimum of AED 40,000 to a maximum of AED 100,000 and shall be due and payable at the time of submission of the license application. Additionally, where an entity is applying for a license for more than one regulated VA Activity, the license extension fee is payable for each additional VA Activity.

In addition to the license application fee, the VASPs must also pay an annual supervision fee for each VA Activity licensed, in advance of conducting VA Activity.

Professional Exemption

The following professionals are exempted from applying for the license:

- practising lawyers;
- accountants;
- other professionally licensed business consultants that carry out any VA Activity in a manner that is wholly incidental to their professional practice, provided that they:
 - remain at all times appropriately authorised by a competent professional body to

- operate in the Emirate; and
- maintain professional indemnity insurance as applicable to their profession.

However, VARA shall have sole and absolute discretion at any time to decide whether an entity has appropriately relied on this professional exemption in respect of any VA Activities it has carried out.

Exempted Entities

- Exempted Entity means:
 - an entity of the federal government of the UAE and/or the government of Dubai; and
 - all public, non-profit, not-for-profit and charitable entities of any entity described above.
- Exempted Entities shall not be subject to the licensing requirements, provided that such Exempted Entities must:
 - notify VARA and obtain confirmation of its exempted status;
 - obtain a no-objection confirmation from VARA prior to carrying out any VA Activities in the Emirate; and
 - comply with all requirements of the regulations, rules, directives and other conditions notified to it by VARA as a condition of providing such no-objection confirmation.
- VARA has sole and absolute discretion at any time in deciding whether an entity is an Exempted Entity and/or granting any no-objection confirmation.

Mandatory registration for large proprietary traders

Any entity in the Emirate that actively invests its own portfolio in Virtual Assets at or above USD 250,000,000 (United States Dollars Two Hundred Fifty Million) equivalent value of Virtual Assets during any thirty calendar days period, must register with VARA, in accordance with the registration process prescribed by VARA from time to time, prior to investing at, or in no event later than three working days of having invested such volume.

Voluntary Registration

In addition to the mandatory registration requirements as provided above, any entity seeking to obtain a commercial or free zone license in the Emirate to carry out the following business activities may voluntarily register with VARA in accordance with the registration process prescribed by VARA:

- Providing technology services relating to or utilising distributed ledger technology to other businesses; or
- Actively invest in their own portfolio in Virtual Assets.

VARA may, in its sole and absolute discretion, grant a license for a VASP to carry out one or more VA Activities to which a licensing application relates.

Prohibition

The issuance of Anonymity-Enhanced Cryptocurrencies (defined below) and all VA Activity related to them are prohibited in the Emirate.

‘Anonymity-Enhanced Cryptocurrencies’ are a type of Virtual Asset which prevent the tracing of transactions or record of ownership through distributed public ledgers and for which the VASP has no mitigating technologies or mechanisms to allow traceability or identification of ownership.

List of VA Activities

The following are the permitted VA Activities:

- **Advisory Services:** These services include offering, providing or agreeing to provide a personal recommendation to a client, either upon its request, or on the initiative of the entity providing the recommendation, in respect of any actions or transactions relating to any Virtual Assets.
- **Broker Dealer Services:** These services include the following:
 - arranging orders for the purchase and sale of Virtual Assets between two entities;
 - soliciting or accepting orders for Virtual Assets and accepting fiat currency;
 - facilitating the matching of transactions in Virtual Assets between buyers and sellers;
 - entering into Virtual Asset transactions as a dealer on behalf of the entity for its own account;
 - making a market in Virtual Assets using client assets; or
 - providing placement, distribution or other issuance related services to clients issuing Virtual Assets.
- **Custody Services:** These services include safekeeping Virtual Assets for or on behalf of another entity and acting only on verified instructions from or on behalf of such entity.
- **Exchange Services:** These services include the following:
 - conducting an exchange, trade or conversion between Virtual Assets and fiat currency;
 - conducting an exchange, trade or conversion between one or more Virtual Assets; or
 - matching orders between buyers and sellers and conducting an exchange, trade or conversion between Virtual Assets and fiat currency or one or more Virtual Assets.
- **Lending and Borrowing Services:** These services include carrying out a contract under which a Virtual Asset shall be transferred or lent from one or more parties to one or more other parties.
- **Management and Investment Services:** These services include acting on behalf of an entity as an agent, or fiduciary, or otherwise taking responsibility for the management, administration or disposition of that entity’s Virtual Assets.
- **Transfer and Settlement Services:** These services include the transmission or transfer, and/or settlement of Virtual Assets from one entity to another entity or from one entity to another VA wallet, address or location.

Mandatory Compliance with Rulebooks

In addition to the VARA Laws, the VASPs are obligated to follow and comply to various rulebooks. The rulebooks provide an exhaustive list of compliances to be undertaken by each VASP and is categorised in the following manner:

- Company Rulebook³: This rulebook governs the structure and management of a VASP. The rules include various compliances relating to allowed structures, board, senior management and staff and the ongoing maintenance of satisfactory internal control and management systems. Further the rulebook also governs the minimum capital requirements of a VASP, ESG related compliances and procedure to be followed in case of insolvency and material change to business or control.
- Compliance and Risk Management Rulebook⁴: This rulebook sets out the general principles for regulatory compliance and the implementation of a compliance management system. Further the rulebook also provides for the mechanism for anti-money laundering and combating financial terrorism, and governs the rules for formulation of anti-bribery and corruption policy of the VASP.
- Technology and Information Rulebook⁵: This rulebook deals with the technology governance and provides for the formulation of a cybersecurity policy and mandates compliance with the data protection and data privacy requirements.
- Market Conduct Rulebook⁶: This rulebook governs the marketing, advertising and promotional activities to be carried out by VASP and mandates the compliance with the relevant marketing regulations. Further, the rulebook also deals with the mechanism for handling of complaints and provides for the requisite public disclosures to be undertaken by VASPs.

Activity Specific Rulebooks

In addition to the aforementioned rulebooks, VASPs must comply at all times with each of the following rulebooks⁷ that correspond to the specific VA activity/ies, it is licensed to carry out:

- Advisory Services Rulebook;
- Broker-Dealer Services Rulebook;
- Custody Services Rulebook;
- Exchange Services Rulebook;
- Lending and Borrowing Services Rulebook;
- VA Management and Investment Services Rulebook; and
- VA Transfer and Settlement Services Rulebook.

Conclusion

By providing a comprehensive legal structure, the law ensures that VASPs operate within a clear set of guidelines, promoting transparency, security, and investor protection. The mandatory licensing, strict compliance with various rulebooks, and adherence to anti-money laundering and combating financial terrorism regulations highlight VARA's commitment to maintaining a high standard of operation in the Virtual Asset sector. Overall, the regulatory regime of VARA sets a foundation for the growth and innovation of the Virtual Asset industry, balancing the promotion of technological advancement with the necessity for regulatory oversight.

³<https://rulebooks.vara.ae/rulebook/company-rulebook>

⁴<https://rulebooks.vara.ae/rulebook/compliance-and-risk-management-rulebook>

⁵<https://rulebooks.vara.ae/rulebook/technology-and-information-rulebook>

⁶<https://rulebooks.vara.ae/rulebook/market-conduct-rulebook>

⁷<https://rulebooks.vara.ae/rulebook/va-activity-and-other-rulebooks>

Supreme Court Analysis of Seetharama Shetty vs. Monappa Shetty⁸: Clarifying Procedures for Insufficiently Stamped Documents Under the Karnataka Stamp Act, 1957

Background

In a move aimed at streamlining regulations, the Securities and Exchange Board of India (“SEBI”) has released a consultation paper⁹ proposing significant changes to the disclosure requirements for Foreign Portfolio Investors (“FPI”). The proposal, which seeks public comments until August 20, 2024, is designed to enhance the ease of doing business for FPIs while addressing concerns about investments originating from Land Bordering Countries (“LBC”).

Legal Issues

The primary issues before the Court were the interpretation and application of Sections 33, 34, 37, and 39 of the Act. The Court had to determine the correct procedure for dealing with insufficiently stamped documents in legal proceedings, the extent of discretionary powers vested in different authorities under the Act, and the appropriate method for imposing penalties on such documents.

Court's Analysis

The Supreme Court conducted a detailed analysis of the relevant sections of the Act. It emphasized that the Act is primarily a fiscal measure aimed at revenue collection, not a tool to defeat legitimate claims on technical grounds. The Court outlined a step-by-step procedure for handling insufficiently stamped documents, clarifying the options available to parties and the authorities.

The judgment outlines the following key steps and procedures for dealing with insufficiently stamped documents under the Act:

- Examination and Impounding (Section 33): The process begins when a person authorized to receive evidence encounters an insufficiently stamped document. They are required to impound the document, preventing its withdrawal. This step ensures that the document remains available for proper assessment and collection of stamp duty.
- Options for Compliance (Section 34): The party relying on the insufficiently stamped document has two main options: a) Pay the deficit duty and penalty as per Section 34, which mandates a penalty of ten times the deficit amount; or b) Apply directly to the district registrar under Section 39 for determination of duty and penalty. Once the required payments are made, the document can be released and used as evidence.
- Admission in Evidence (Section 35): This section prohibits questioning the admission of a document in evidence on the ground of insufficient stamping once it has been admitted, subject to certain exceptions.

⁸ 2024 INSC 650

- Forwarding to Deputy Commissioner (Section 37): If the party pays the duty and penalty under Section 34, the person impounding the document must send an authenticated copy to the Deputy Commissioner along with the collected amount. In cases where Section 34 is not invoked, the original document is sent to the Deputy Commissioner.
- Deputy Commissioner's Powers (Section 39): The Deputy Commissioner has discretionary power to determine the appropriate stamp duty and penalty, which may extend up to ten times the deficit amount but is not mandatory. This discretion allows for consideration of various factors in setting the penalty.
- Finality and Exceptions: Once the deficit duty and penalty are paid as per the above steps, the document becomes compliant with the Act. However, this is subject to any just exceptions provided in the Act.

The judgment clarifies further that a party can choose to directly approach the district registrar under Section 39 before presenting the document in court. This approach can preemptively resolve stamp duty issues. The judgment notes that the opposing party has little role in determining the quantum of penalty, as this is primarily between the authority/court and the party presenting the document.

These steps provide a comprehensive framework for addressing issues of insufficient stamping, balancing the need for revenue collection with fairness in legal proceedings. The judgment emphasizes the importance of following the correct procedure based on the specific circumstances of each case.

Court's Decision

Based on its analysis, the Supreme Court set aside the lower court's direction to pay ten times the penalty of the deficit stamp duty. Instead, it instructed the trial court to send the agreement of sale to the district registrar for determination of the appropriate deficit stamp duty and penalty. This decision allows for more flexibility in penalty determination, as the district registrar has discretion in setting the penalty amount up to ten times the deficit duty.

Conclusion

This judgment has significant implications for legal practice and the interpretation of stamp duty laws across India. It provides clear guidance on handling insufficiently stamped documents in court proceedings, balancing revenue collection with fairness in legal processes. The decision reinforces the principle that technical objections under the Act should not be used to defeat otherwise legitimate claims. It also emphasizes the importance of following proper procedures and respecting the discretionary powers granted to specific authorities under the Act.

The Supreme Court's judgment in this case represents a balanced approach to interpreting and applying stamp duty laws. It seeks to ensure that while the state's revenue interests are protected, parties are not unduly penalized for technical deficiencies in documentation. This decision provides valuable guidance for courts, legal practitioners, and parties involved in disputes over insufficiently stamped documents, promoting a fair and consistent application of stamp duty laws across India.

RECENT REGULATORY UPDATES

- I. Review of eligibility criteria for entry/exit of stocks in derivatives segment dated August 30, 2024.- Read more at- https://www.sebi.gov.in/legal/circulars/aug-2024/review-of-eligibility-criteria-for-entry-exit-of-stocks-in-derivatives-segment_86373.html
- II. Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation(s) dated August 22, 2024: Read more at- https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-master-circular-for-infrastructure-investment-trusts-invits-dated-may-15-2024-review-of-statement-of-investor-complaints-and-timeline-for-disclosure-of-statement-of-deviation-s-_86047.html
- III. Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation(s) dated August 22, 2024: Read more at- https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-master-circular-for-real-estate-investment-trusts-reits-dated-may-15-2024-review-of-statement-of-investor-complaints-and-timeline-for-disclosure-of-statement-of-deviation-s-_86045.html
- IV. Modalities for migration of Venture Capital Funds registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996 to SEBI (Alternative Investment Funds) Regulations, 2012 dated August 19, 2024: Read more at- https://www.sebi.gov.in/legal/circulars/aug-2024/modalities-for-migration-of-venture-capital-funds-registered-under-erstwhile-sebi-venture-capital-funds-regulations-1996-to-sebi-alternative-investment-funds-regulations-2012_85914.html
- V. Guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs dated August 19, 2024: Read more at- https://www.sebi.gov.in/legal/circulars/aug-2024/guidelines-for-borrowing-by-category-i-and_category-ii-aifs-and-maximum-permissible-limit-for-extension-of-tenure-by-lvfs_85909.html
- VI. Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 – Board nomination rights to unitholders of REITs dated August 06, 2024: Read more at- https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-master-circular-for-real-estate-investment-trusts-reits-dated-may-15-2024-board-nomination-rights-to-unitholders-of-reits_85493.html
- VII. Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Board nomination rights to unitholders of InvITs dated August 06, 2024: Read more at- <https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-master-circular-for-infrastructure-investment-trusts-invits-dated-may-15-2024-board-nomination-rights-to-unitholders-of->

[invits 85491.html](#)

- VIII. Institutional mechanism by Asset Management Companies for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities dated August 05, 2024. Read More at- <https://www.sebi.gov.in/legal/circulars/aug-2024/institutional-mechanism-by-asset-management-companies-for-identification-and-deterrence-of-potential-market-abuse-including-front-running-and-fraudulent-transactions-in-securities 85468.html>
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