

## UAE OPEN FINANCE REGULATION - Q&AS

The Central Bank of the UAE ("CBUAE") has now issued its long-awaited Open Finance Regulation (the "**Regulation**"), establishing a new and comprehensive framework for the licensing, supervision and operation of Open Finance ("**Open Finance Framework**") in the UAE. The Regulation was published in the Official Gazette on 15 April 2024 and shall come into effect in phases to be notified by the CBUAE.

This marks a major new development in the UAE financial sector and has implications for all categories of CBUAE licensees. As well as providing increased control and options for consumers, Open Finance in the UAE will continue to drive innovation and growth across the financial sector. To help you navigate this new development, we have set out below responses to some of the key questions you may have.

### What is "Open Finance"?

Open Finance is a secure way for financial institutions to open their systems to other institutions and accredited third-party providers. This allows these parties access to financial data held by the financial institution (facilitated by APIs) to provide information and deliver innovative financial services solutions, tailored to individual customer's needs.

It encompasses more than just local banks, and includes a broader scope of foreign bank branches, insurance, payment services and other personal finance providers.

Open Finance can help create novel solutions that provide retail, SME, and corporate consumers with better control over their financial information and offer greater choice in their financial services.

### Who does this apply to?

Persons who are seeking to provide Open Finance services in the UAE will require a license, this will comprise:

- Data Sharing – this is an online service to provide a person with consolidated data relating to one or more accounts and/or products held with another financial services provider licensed by the CBUAE.
- Service Initiation – this is initiating, by electronic means, a transaction relating to an account or product with a financial services provider.

### Key topics

- What is "Open Finance"?
- Who does this apply to?
- When will the regulations apply?
- What new obligations do CBUAE licensees need to comply with?
- How does the Open Finance Framework operate?
- How can an Open Finance license be obtained?
- What does this mean for existing PSPs conducting similar services already?
- What does this mean for international and free zone providers?
- How is compliance with data protection and security requirements ensured?
- How does the UAE Open Finance Framework compare to open finance initiatives elsewhere?
- What happens / what should I do next?

Please see below for further details on the licensing requirements and how this impacts similar licensed services in other regulations.

Participation in the Open Finance Framework is mandatory for all CBUAE licensees including:

- banks incorporated in the UAE;
- branches of foreign banks/representative offices of foreign banks;
- specialized, restricted license and Islamic banks/windows;
- finance companies;
- payment service providers (of all categories) and retail payment systems providers;
- stored value facility providers;
- exchange houses;
- loan-based crowdfunding companies; and
- insurance brokers and insurance companies (including those incorporated in the UAE and foreign branches).

Insurers should note that, unlike many international regimes, "Open Insurance" along with "Open Banking" is included in the UAE's Open Finance Framework.

Whether or not a licensee provides Open Finance services, to ensure the functioning of the Open Finance Framework, they must all comply with the requirements of the Regulation with respect to data sharing and service initiation by users.

### **When will the regulations apply?**

Licensees which are mandated to provide Open Finance access will be onboarded in phases. The first phase will include a number of banks operating in the UAE, with additional financial institutions and insurance companies to follow with other licensees.<sup>1</sup> It is not currently clear when the regulations will be fully implemented, with further CBUAE Circulars due to clarify this point, however Tier 1 banks have received initial communications from CBUAE on the introduction phase.

Later phases of the onboarding will be announced by the CBUAE through their official channels in due course.

### **What new obligations do CBUAE licensees need to comply with?**

All CBUAE licensees, whether or not they are engaged in providing Open Finance services, must, in respect of their customer data:

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<sup>1</sup> The CBUAE has announced that it plans for to the majority of customers to have access to Open Finance applications in 2024: <https://www.centralbank.ae/media/4kfjymcz/al-etihad-payments-launches-open-finance-to-strengthen-the-financial-services-sector-in-the-uae-en.pdf>

- establish and maintain a dedicated interface to provide secure on-line access to Accounts and Products by Open Finance providers through the API Hub and other relevant components of the Open Finance Framework;
- co-operate openly and in a timely manner with Open Finance providers with regard to the sharing of user data of the users who are customers of the Licensee and/or the initiation of Transactions, subject to the User's consent.

Licensees may only share their own customer's data and cannot re-share data provided to them by other service providers.

The Regulation includes an express prohibition on data scraping, being the extraction of user data onto a locally saved spreadsheet or database file (or other similar data extraction activities). The Open Finance Framework therefore does not present an opportunity to cross sell data.

### How does the Open Finance Framework operate?

The CBUAE has announced that the Open Finance system will be hosted by AI Etihad Payments (as subsidiary of CBUAE) in collaboration with Core42 and will consist of the following technical features:

- **Trust Framework:** This will provide participant validation, a directory of all participants and digital certificates to establish secure communication channels, along with a documentation portal to hold all documentation on standards, technical specification, requirements and business rules for all participants.
- **API Hub:** This will centralize access to Open Finance Framework services by aggregating individual participant APIs into a single platform. This will provide a harmonised and standardised API set for participants in the framework.
- **Common Infrastructural Services:** These services will provide functionalities for the entire Open Finance Framework ecosystem, including user consent management, service assurance, reporting analytics, dispute resolution tools, and potential value-added features.

Together, these provide Open Finance access for the cross-sectoral sharing of data and the initiation of transactions on behalf of users, with their express consent.

A regulatory sandbox will also be established to facilitate ongoing experimentation, including in respect of Open Finance, which will be structured by the CBUAE's new Sandbox Regulations, also issued in April 2024 along with these regulations.

The CBUAE has noted that the UAE is the first country globally to implement a consolidated trust-framework and centralised API hub, which will enable a single secure, and centralised, connection to access the whole of the banking and insurance markets.

The CBUAE has adopted robust measures to protect users, with consent being a key principle of the Open Finance Framework, along with the application of appropriate authentication processes and the use of secure communications.

## **How can an Open Finance license be obtained?**

The Regulation establishes a new category of CBUAE regulatory license for providers of Open Financial Services ("**Open Finance License**") which enables them to undertake the activities of "Data Sharing" and/or "Service Initiation", as set out above.

Providers can opt for either one or both of these licenses. The Regulation sets out an application process to the CBUAE for those seeking to obtain such a license. This includes various requirements as to governance and control consistent with existing CBUAE regulatory licensing applications, and also additional minimum capital requirement of at least 1m AED (the CBUAE may impose additional capital requirements on a risk adjusted basis) and a specific requirement to obtain professional indemnity insurance subject to minimum limits set by the CBUAE.

## **What does this mean for existing PSPs conducting similar services already?**

Payment services providers conducting payment account information services and payment initiation services pursuant to a CBUAE license under the RPSCS regulation<sup>2</sup> will be required to fulfil the governance, control, capital and insurance requirements above as well as obtaining additional approvals from CBUAE under the Open Finance Framework.

An Open Finance License does not permit license holders to perform any other category of licensed activity. In particular, it will not entitle license holders to provide any form of advice or to arrange transactions in licensed activities, or hold customer funds in any form. If those activities are contemplated, additional regulatory licenses will be required.

### **Deemed licensees**

Some categories of existing CBUAE licensees are "deemed" to hold an Open Finance License but are required to (following a notification procedure) obtain the approval of the CBUAE prior to commencing such activities.

Persons deemed licensed include CBUAE licensed:

- (i) Banks;
- (ii) Finance companies;
- (iii) Retail payment services providers;
- (iv) Insurance brokers and companies; and
- (v) Stored value facility providers.

To the extent that such licensees are already conducting activities that fall within the scope of the Open Finance Regulation, it is likely that such approval under these regs should be sought.

## **What does this mean for international and financial free zone providers?**

The Regulation contains strict localisation requirements and expressly requires additional approvals from both the CBUAE and "any other relevant competent authority", for maintaining copies of customer data outside of the

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<sup>2</sup> The CBUAE Retail Payment Services and Card Schemes Regulations

onshore UAE. This would require UAE localisation of data for international providers, including those in the DIFC and ADGM. Such DIFC and ADGM providers would also need a CBUAE license to provide the services within onshore UAE.

## How is compliance with data protection and security requirements ensured?

Explicit consent is one of the core features of the UAE Open Finance Framework. Open Finance providers must not process any personal data for the provision of its services without explicit consent of the user to do so.

Such user consent must be: (i) specific to the purpose for which it is provided; (ii) given using a clear, objective and affirmative statement or action; (iii) clear as to the duration of the consent; and (iv) capable of being withdrawn.

Licensees must select and implement reliance and effective user authentication procedures, including two factor authentication. All participants must use common and secure open standards of communication for the purpose of identification, authentication, notification and information, as well as for the implementation of adequate security measures.

Beyond existing regulations, the Regulation outlines additional data processing requirements for Open Finance Providers:

- **Lawful, Fair, and Transparent Processing:** Personal data must be processed in a manner that is lawful, fair, and transparent to the user.
- **Purpose Limitation:** The data collected must be limited to specific, explicit, and legitimate purposes related to Open Finance services.
- **Data Minimization:** The amount of personal data collected should be adequate, relevant, and limited to what is necessary for the intended Open Finance service.
- **Accuracy and Retention:** Providers are responsible for ensuring the accuracy of personal data and must take necessary steps to maintain its accuracy. Additionally, personal data must not be retained for longer than necessary to fulfil the purpose of collection.
- **Security Measures:** Providers must implement the appropriate technical and organizational measures to safeguard personal data from unauthorized access, unlawful processing, accidental loss, destruction, or damage.

Data sharing providers must not process any user data that is "sensitive data"<sup>3</sup> for the provision of data sharing, even with the explicit consent of the user.

Many of the new requirements place substantial obligations on the firms to set out "secure" or "safe" methods of data protection with additional CBUAE standards being issued to the participant licensees as the framework is rolled out. Along with the data requirements set out above, we expect prospective licensees will need to engage closely with the CBUAE to meet the relevant standards.

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<sup>3</sup> "Sensitive data" is any personal data related to the health of a person, such as his/her physical, psychological, mental, genetic or sexual condition, including information related to healthcare services provided thereto that reveals his/her health status

The Regulation places strict liability for data loss with administrative, financial sanctions and other penalties for data breaches or loss of user data.

Open Finance providers will also be subject to existing consumer protection laws and their implementing regulations, which may be further developed to specifically address the Open Finance Framework.

### **How does the UAE Open Finance Framework compare to open finance initiatives elsewhere?**

Many jurisdictions have implemented open banking initiatives, including the UK in 2017 and European Union member states in 2018. The scope of both initiatives was significantly narrower than the UAE Open Finance Framework, in that they applied only in respect of payment accounts maintained by banks (enabling certain third parties to initiate payments or obtain account information). In addition, neither regime creates a body with the same scope of API-related functions envisaged in respect of the Trust Framework, API Hub and Common Infrastructural Services, although it is likely that lessons were learned from the role of Open Banking Ltd in the UK. As noted above, there is a trend for the expansion of open banking into further areas of finance, with significant reforms proposed in the UK and European Union. One notable feature of most regimes, regardless of their scope, is the balancing act to be performed by the regulated entities in scope – protecting customer data and accounts behind a firewall, while implementing the open banking/finance provisions required by local regimes.

### **What happens / what should I do next?**

Licensees will need to keep abreast of additional implementation from the CBUAE given the phased approach. We understand the CBUAE has prepared accompanying standards for the Open Finance Regulation and may issue further standards from time to time, in cooperation with other government bodies and consultation with relevant stakeholders, including those related to digital access, cybersecurity, customer journey design and fees.

Licensees would be well advised to take the opportunity to assess their current interfaces, terms and conditions (including the specific requirements set by the Regulation), data storage and retention policies and the basis on which customer data is processed, for compliance with the Regulation.

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