

Client Alert

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Digital Currencies and Digital Tokens are Regulated as Securities under Malaysian Securities Laws

Pursuant to the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (the "**Prescription Order**"), which came into force on 15 January 2019, digital currencies and digital tokens which are not issued or guaranteed by any government body or central bank, and fulfils other specific features, are prescribed as securities.

This represents a shift in the regulatory regime by the Securities Commission of Malaysia ("**SC**") and the Central Bank of Malaysia ("**BNM**") towards digital currencies and digital tokens, and the exchanges. Prior to this, the SC had only issued cautionary statements warning investors of the risks of investing in digital currencies and digital tokens, and BNM had also reminded members of the public to refer to the list of licensed or approved institutions to carry out the regulated activities before participating in such transactions.

The implications of treating digital currencies and digital tokens as securities are significant as the Malaysian Capital Markets and Services Act 2007 ("**CMSA**") would apply. This in turn will affect how digital currencies and digital tokens can be offered and traded in Malaysia moving forward.

Offering of Digital Currencies and Digital Tokens

Any person who wishes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase digital currencies and digital tokens will have to seek approval from the SC and register a disclosure document with the SC.

It is expected that the SC will be issuing further guidelines on the criteria for approving applicants and disclosure standards/requirements that would apply to offering documents/white papers.

Persons who deal in digital currencies and digital tokens as a business (which includes solicitation of investors) will also be subject to the licensing requirements under the CMSA.

Digital Exchanges

Prior to the Prescription Order, digital exchanges (where digital currencies and digital tokens are traded) had to comply with anti-money laundering regulations as a reporting institution. However, in addition, digital exchanges will now have to be registered with the SC as a recognised market operator.

It is expected that the SC will be issuing further guidelines on the criteria for registration and other operating standards such as trading rules, client asset protection, cyber security and business continuity measures.

Conclusion

The Prescription Order issued by the Minister of Finance ("**MoF**") is welcomed as it provides certainty to issuers and digital exchanges on how digital currencies





and digital tokens are classified and regulated in Malaysia. The MoF, who oversees the SC and BNM, has also demonstrated its willingness to recognise new classes of investment assets and to respond to emerging risks arising from such assets. The approach adopted by the MoF is comparable to that taken by the securities regulator in Thailand, where digital currencies and digital tokens are also generally regulated as securities and a new licensing regime has been implemented for digital currencies and digital tokens.

The SC is likely to issue guidelines relating to digital currencies and digital tokens in the near future. Offerors of the digital currencies and digital tokens and exchanges should be prepared to adhere to a more stringent regulatory environment, and investors may benefit from greater disclosures as a result of this change, in the near future.

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