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Singapore: Law & Practice

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Drew & Napier LLC

SINGAPORE

Law and Practice

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Contents

Drew & Napier LLC is one of the largest law firms in Singapore and has been providing exceptional legal service and representation to discerning clients since 1889. The firm is consistently ranked in the top tier by major international publications and the calibre of its work is acknowledged internationally at the highest levels of government and industry. Drew & Napier's active blockchain practice regularly advises major cryptocurrency exchanges, token projects, and venture capital and hedge funds on a variety of regulatory, transactional and dispute matters. With market-leading technology, intellectual property and tax practices, the firm's full-service offering provides a one-stop shop to cryptocurrency businesses and non-profit organisations operating in Singapore.

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1. Blockchain Market

1.1 Evolution of the Blockchain Market

Singapore has built upon its strengths as a global financial centre to become a leading global blockchain hub. It is home to a healthy blockchain ecosystem, comprising numerous players at the forefront of trends in areas such as asset tokenisation, cryptocurrency trading and custody, supply chain, insurance, digital identity and mobility.

This enviable position has not come about by accident. In response to the increasing relevance of blockchain technology, Singapore has fostered a balanced legal and regulatory regime for the blockchain space that seeks to encourage innovation while protecting participants, investors and the general public. The Monetary Authority of Singapore (MAS) provides clarity and guidance on the application of securities and commodities laws to digital assets, thereby encouraging new investments in financial technologies.

The collapse of a number of large players such as FTX, Terraform Labs and Three Arrows Capital has not significantly changed MAS' regulatory stance. While their collapse has cast the spotlight on new risks that have emerged with the development of blockchain technology, Singapore remains receptive and steadfast in its position to develop Singapore as an innovative and responsible global digital asset hub.

Speaking at the Singapore Fintech Festival on 16 November 2023 (the "Fintech Festival Speech"), Ravi Menon, the then managing director of MAS, identified three key objectives Singapore intends to achieve through fintech collaboration:

- making cross-border payments cheaper, faster and more efficient;
- enabling financial assets to be transacted seamlessly across multiple trading venues through digital assets, digital money and interoperable digital networks; and
- fostering a trusted data and disclosure system to support sustainable finance.

MAS has been actively collaborating with traditional financial institutions and fintech firms to explore the use of blockchain technology in the financial markets in order to understand opportunities and risk areas. MAS is also testing the use of blockchain technology in cross-border

payments through research collaborations with the central banks of other jurisdictions, such as the USA (see **4.7 Other Government Initiatives**).

MAS has also identified the following five areas of risk in digital assets which it will focus its regulatory approach on:

- money laundering and terrorist financing risks;
- technology and cyber-related risks;
- harm to retail investors;
- stability in stablecoins; and
- financial stability risks.

In 2023, MAS completed a round of consultations with the public. MAS will implement measures to (i) enhance retail investor protection and business conduct requirements which will be applicable to digital payment token (DPT) service providers, and (ii) introduce new requirements relating to single-currency pegged stablecoin issuance activities. In relation to (ii), MAS has granted in-principle approval under the Payment Services Act 2019 (the "PS Act") to three entities which will issue stablecoins that substantively comply with the upcoming stablecoin regulatory framework. In his Fintech Festival Speech, Ravi Menon mentioned that once legislative amendments take effect, it is MAS' intention for the xSGD and USD stablecoins issued or to be issued by StraitsX, and new USD-pegged stablecoins issued by Paxos Digital Singapore, to be regarded as "MAS-regulated stablecoins".

MAS is currently deliberating on its findings from its consultation on proposing regulatory measures to address market integrity risks in DPT services.

The Infocomm Media Development Authority (IMDA) actively invests in the future of blockchain by seeding blockchain challenges and "hackathons" with funding and exposure, spurring innovation in support of Singapore's "Smart Nation" policy objectives.

Against this backdrop, businesses offering blockchain-based services will have to flexibly adapt and adjust to enhanced regulation and licensing in Singapore, as the amendments to the PS Act came into force in April 2024 and the introduction of new legislation (the Financial Services and Markets Act (FSMA), which was passed into law in April 2022) to regulate the blockchain space is underway (see **2.1 Regulatory Overview** and **2.2 International Standards**).

1.2 Business Models

The use of blockchain in Singapore runs the full gamut from public to private enterprises, including:

- government registers for non-profit purposes – eg, OpenCerts, which allows employers to verify academic certificates from Singapore's universities and institutions of higher learning;
- layer-1 blockchains – eg, HeLa, a layer-1 blockchain network with confidentiality-enhancing and consensus protocols developed by HeLa Labs and A*STAR's Institute of High Performance Computing (A*STAR is a statutory board under the Ministry of Trade and Industry of Singapore);
- digital platforms to support specific industries – eg, Contour, a blockchain-driven trade finance network led by R3 and comprising eight global banks including HSBC and Standard Chartered, worked with financial institutions to put letters of credit on a distributed ledger and tied up the network's first fully digital end-to-end secured letter of credit between several organisations in the mining value chain;

- large private enterprises – eg, Senoko Energy, Singapore's largest energy company, partnered with Electrify, a Singaporean retail electricity marketplace start-up to launch a peer-to-peer energy trading platform – SolarShare; and
- financial services businesses leveraging blockchain in areas such as insurance, lending, asset securitisation and commodities trading – MAS has licensed and regulated several new digital exchanges utilising blockchain technology to make securities and digital assets publicly available, including a Payment Services Licence (defined in **4.1.1 Regulatory Overview**) for a digital assets exchange set up by Singapore's DBS Group Holdings, South-East Asia's largest bank, which facilitates the issuance and trade of not only cryptocurrencies but also security tokens.

In addition, Singapore has a thriving digital assets trading, custody and investment market, with exchanges, venture capital funds, crypto hedge funds, decentralised finance (DeFi) and non-fungible token (NFT) projects all contributing to an active market.

Decentralised Finance

The DeFi market continues to develop in Singapore, in part driven by the collapse of multiple centralised digital asset businesses and the rise of meme coins. DeFi offerings include automated market-making pools, decentralised synthetic investment platforms, diversified lending services and lending-based derivatives, decentralised prediction markets and DeFi token offerings by digital asset trading platforms. Investments in such projects continue to grow, as global businesses explore basing their regional operations in Singapore.

MAS has observed that decentralised exchanges present higher risks of money laundering as they are often unregulated (due to the lack of a central administrator) and may not apply adequate measures for anti-money laundering and counter-financing of terrorism (AML/CFT). The expanded scope of the PS Act seeks to plug this gap as it brings decentralised exchanges under its purview (see **4.1.1 Regulatory Overview**).

As for DeFi specifically, Singapore has not taken any other explicit regulatory positions. Businesses involved in DeFi will have to comply with pre-existing laws and regulations covering the scope of services they offer (see **4.1 Regulatory Overview**).

Among the financial products regulated under the Securities and Futures Act (SFA), MAS has allowed payment token derivatives to be traded on approved exchanges, and such activity will be regulated under the SFA. Payment token derivatives which are not traded on approved exchanges are, as at the time of writing (June 2024), generally unregulated (see **4.1.1 Regulatory Overview**).

NFTs

Fundamentally, NFTs are digital assets with a unique digital signature, verified and secured by blockchain technology. "Vanilla" NFTs generally function as immutable digital receipts verifying that their holders own the underlying assets (or a copy thereof).

With the relative lack of regulation of vanilla NFTs – ie, those that do not bear the characteristics of capital markets products – the environment for acquisition and use of NFTs by residents in Singapore is fairly liberal. Some prominent NFT projects in Singapore include IreneDAO and Imaginary Ones. These are projects which

go beyond vanilla NFTs and incorporate other elements such as decentralised governance structures and issuance of other fungible digital assets. However, such projects will still need to assess whether these additional functions cause the projects or their NFTs to be subject to regulation (see **2.5 Other Digital Assets**).

Apart from sales of NFTs, NFTs have also been used to promote social causes in Singapore. NFT charity auctions were hosted on behalf of the National Trades Union Congress (NTUC) U-Care Fund and the United Nations High Commissioner for Refugees.

Imaginary Ones started as a project to spread love, positivity and creativity. As the project evolved, Imaginary Ones drew the attention of global fashion brand, HUGO BOSS, which culminated in a collaboration that resulted in the launch of a physical store "takeover" at Marina Bay Sands (Singapore). This allowed Imaginary Ones to bring the digital characters that were the subject of the NFTs to life.

In 2023, OCBC Bank set up a virtual branch on Decentraland, a metaverse platform (OCBCx65Chulia). Using the platform, visitors can open a bank account and apply for a credit card through the bank's website. It also allows visitors to see OCBC's banking products, services and history.

As large brands make inroads into the space, it seems that NFTs are becoming increasingly mainstream in Singapore.

2. Digital Assets

2.1 Ownership

The manner of determination of ownership of digital assets under Singapore law has not been conclusively determined at this time as the exact legal nature of digital assets remains unclear. Although the High Court in the Bybit Fintech case (ByBit Fintech Ltd v Ho Kai Xin and others [2023] 5 SLR 1748) decided that digital assets can constitute property (see also **5.1 Judicial Decisions and Litigation**), the concept of "ownership" of a digital asset under Singapore law was not considered.

Nevertheless, following the approach of the Singapore Court of Appeal in the Quoine case (Quoine Pte Ltd v B2C2 Ltd [2020] SGCA (I) 02), it is anticipated that ownership of digital assets will be determined by analogy to other assets. Thus, a person who has acquired knowledge and control of a private key through lawful means would generally be treated as the owner of that digital asset, in the same way that a person lawfully in possession of a tangible asset is presumed to be the owner.

Existing laws would then apply to each fact-specific scenario, for example:

- a person may hold the key on behalf of another, as a custodian or intermediary, in which case ownership may be determined by established laws on agency or trust;
- a digital asset may have multiple keys, in which case ownership may be shared or separated between the holders, perhaps by reference to different functions of the asset;
- a person who has obtained a private key unlawfully, such as through hacking, would not be treated as the lawful owner; or

- in non-anonymous systems where the owners are identified in the transaction ledger, the status of the record (eg, whether treated as definitive or merely evidential) would depend on the rules of the blockchain system that the parties have agreed to.

There is also no legal standard for determining when transfers of digital assets can be considered final given that each blockchain may have different mechanisms for determining when a block containing the transaction can be reverted (eg, slashing a validator's stake) and may differ in confirmation times and numbers before another block can be added. However, for commercial certainty, parties can contractually agree that a transfer has occurred on the basis that a certain number of confirmations on the blockchain network have been provided.

2.2 Categorisation

Fungible digital assets in Singapore can be broadly characterised as follows.

- Security tokens – digital assets which carry security features as shares, debentures, bonds with opportunities to generate income, as well as potential legal liabilities for the issuer.
- Asset-backed tokens – digital assets backed with assets, such as gold, securities, real estate, cash or diamonds.
- Payment tokens – digital assets used for transactions, exchange, assets or value storage, as well as accounting limits.
- Utility tokens – digital assets for supporting services or functionalities on blockchain-based platforms.
- Governance tokens – digital assets which confer on holders the right to vote on decisions and the future trajectory of the projects.
- Hybrid tokens – digital assets sharing two or more different characteristics of the above tokens to varying degrees.

As discussed in **4.1.1 Regulatory Overview**, digital assets that have certain characteristics may incur regulatory and/or legal liability on the part of the issuer. Each digital asset would have to be examined on a case-by-case basis to determine their corresponding regulatory requirements. For instance, businesses will need to consider whether their digital asset falls within the definition of a capital markets product under the SFA, a DPT under the PS Act, or a digital token (DT) under the FSMA.

2.3 Tokenised Securities

Digital assets which are, or are deemed to be, securities or other capital markets products under the SFA will be subject to licensing and prospectus requirements. These include tokens representing interests in:

- a share, where it confers or represents ownership interest in a corporation, represents liability of the token holder in the corporation, and represents mutual covenants with other token holders in the corporation inter se;
- a debenture, where it constitutes or evidences the indebtedness of the issuer of the digital asset in respect of any money that is or may be lent to the issuer by a token holder;
- a unit in a business trust, where it confers or represents ownership interest in the trust property of a business trust;
- a securities-based derivatives contract, which includes any derivatives contract of which the underlying thing is a share, debenture or unit in a business trust; or
- a unit in a collective investment scheme (CIS), where it represents a right or interest in a CIS,

or an option to acquire a right or interest in a CIS.

Tokenised securities would generally be treated in the same way as security tokens save that an added element to consider is whether the token itself constitutes a securities-based derivatives contract.

2.4 Stablecoins

MAS has clarified that most stablecoins today may be regulated as "DPTs", rather than "e-money". To that end, there is no distinction in treatment between algorithmic stablecoins and asset-backed stablecoins (see also **2.6 Use of Digital Assets in Payment**).

However, MAS has also announced that it will be implementing a new regulatory framework which will apply to single-currency stablecoins issued in Singapore which are pegged to either the Singapore dollar or any G10 currency. MAS will be expanding the regulatory regime under the PS Act to include a new payment service known as "Stablecoin Issuance Service" which covers the issuance of single-currency stablecoins which value in circulation exceeds SGD5 million, and which are issued by an entity that is based in Singapore. Only stablecoins which are backed by very low-risk reserve assets (such as cash, cash equivalents or certain short-term debt securities) can fall within this new regulatory framework and be labelled as "MAS-regulated stablecoins".

2.5 Other Digital Assets

Singapore's legal regime generally takes a technology-neutral approach, focusing on evaluating the substance and characteristics of the underlying asset when assessing whether such asset falls within the regulatory remit of the relevant regulators.

For digital assets which are neither stablecoins, payment tokens nor tokenised securities, the specific attributes of such digital assets must be considered to identify the relevant Acts which apply.

Presently, Singapore law does not specifically regulate the creation, marketing and trading of NFTs. Instead, MAS evaluates the substance and characteristics of the underlying asset. Hence, an NFT that has attributes of capital markets products would be regulated under the SFA. For example, if an NFT represents rights to a portfolio of shares, it will be regulated as a CIS under the SFA.

However, if an NFT has artwork as its underlying asset, then it is not likely to be regulated as a financial product. Instead, general principles of contract and copyright will apply to the creation, sale and trade of such NFTs. Minting of NFTs may be a randomised process – users may not know what attributes their NFT will have on mint date (the revealing of the art underpinning the NFT may also not be simultaneous). This introduces a "chance" element which raises questions as to whether activities associated with such mints are regulated under the new Gambling Control Act and within the purview of the Gambling Regulatory Authority of Singapore.

The supply of NFTs is also considered a taxable supply of services, and hence subject to goods and services tax (GST). This is because NFTs are not intended to be fungible, unlike their DPT counterparts.

2.6 Use of Digital Assets in Payment

Singapore permits the use of cryptocurrencies as a means of payment. There have been instances of M&A transactions and equity investments where the purchase consideration was settled

in digital assets, as well as secured financing transactions with security packages that included digital assets. There are no notable limitations on the use of cryptocurrencies for payment, after recent GST reform (see **6.1 Tax Regime** on the use of digital assets for payment).

Relatedly, payment tokens are regulated as DPTs under the PS Act. Under the PS Act, a DPT is defined as "any digital representation of value (other than an excluded digital representation of value) that: (a) is expressed as a unit; (b) is not denominated in any currency, and is not pegged by its issuer to any currency; (c) is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt; (d) can be transferred, stored or traded electronically; and (e) satisfies such other characteristics as [MAS] may prescribe". Cryptocurrencies such as bitcoin (BTC) and ether (ETH), as well as stablecoins such as Tether (USDT) and USD Coin (USDC) would generally be regarded as DPTs under the PS Act.

It is useful to note that the following types of digital assets are exempted from regulation under the PS Act:

- "Limited Purpose DPTs", which refers to payment services involving non-monetary consumer loyalty or reward points or in-game assets or similar digital representations of value, which cannot be returned to the issuer or sold, transferred or exchanged for money; and
- "Central Bank DPTs", where a central bank or financial institution provides services for dealing in or facilitating the exchange of central bank DPTs (ie, CBDCs).

2.7 Use of Digital Assets in Collateral Arrangements

The use of digital assets as security has not been explored in case law, legal precedent or legislation in Singapore. Nevertheless, following the approach of the Singapore Court of Appeal in the Quoine case (see **5.1 Judicial Decisions and Litigation**), it is anticipated that security over digital assets will be determined by analogy to other assets. Thus, traditional common law forms of security interests such as the assignment, mortgage, charge and pledge may be considered. Assignments, mortgages or charges could all be applicable to digital assets categorised as securities or currency (when stored in online wallets). Physical digital asset wallets could also be pledged as security, to the extent that such physical wallets can be considered goods or personal chattels.

3. Smart Contracts

3.1 Enforceability

The enforceability of smart contracts has not been determined in case law, legal precedent or legislation in Singapore. However, the judgment in the Quoine case (see **5.1 Judicial Decisions and Litigation**) does not preclude a smart contract from being a legally binding contract, provided that the elements typically required to constitute a legally binding contract are present. These elements are offer, acceptance and the intention to create legal relations.

This approach is supported by the IMDA. In its Consultation Paper on the Review of the Electronic Transactions Act (ETA), the IMDA affirmed that the ETA does not prevent the use and formation of smart contracts, and that a contract by sole virtue of its automatic formation is unlikely to be denied validity or enforceability. The IMDA

also pointed out that cryptographic hashes may, at the very least, form possible components of electronic signatures for purposes of party intention and authentication to create a contract.

Formality Requirements

Assuming a smart contract constitutes a legally binding contract, there may also be various formality requirements which must be fulfilled. For instance, Section 6 of the Civil Law Act prescribes that a contract for sale of immovable property has to be in writing and signed in order to be enforceable. The requirement that the contract be in writing could be challenging to fulfil in the context of a smart contract for sale of immovable property, with the consequence that the enforceability of that smart contract could be uncertain.

It also remains to be judicially determined whether the writing component for smart contracts may be fulfilled, by way of Section 7 of the ETA, which provides that an electronic record will constitute "writing". An electronic record in turn is defined under the ETA as "a record generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another". Thus far, the ETA has only been judicially discussed when applying it to recognising emails as forming a valid and legally enforceable contract, or in recognising that electronic contracts may be formed in the context of internet transactions. It remains unclear if the definition of electronic records under the ETA can be extended to encompass smart contract program codes.

4. Blockchain Regulation

4.1 Regulatory Regime

4.1.1 Regulatory Overview

The SFA and the PS Act

Singapore's blockchain legal regime generally takes a technology-agnostic approach, focusing on appropriately regulating the underlying activity, rather than blockchain or distributed ledger technology as the enabling technology. As such, there is no specific single piece of legislation governing the use of blockchain or distributed ledger technologies in Singapore. Instead, existing legislation and regulations have been, and are continually being, expanded or clarified to address blockchain or distributed ledger technology-related issues.

Central to this regime is the SFA, which is the main legislation governing the capital markets and financial investments sector in Singapore. MAS has clarified that offers or issuances of such digital assets will be regulated under the SFA if they have the characteristics of capital markets products, as defined in the SFA. To aid in this analysis, MAS has helpfully published A Guide to Digital Token Offerings (the "MAS Guide"), which provides case studies on the features of a digital asset that would result in that digital asset being deemed a capital markets product under the SFA.

Coupled with the SFA is the PS Act, under which companies providing account issuance, domestic money transfers, cross-border money transfers, merchant acquisition, electronic money (e-money) issuance, or DPT or money-changing services in Singapore must, if not exempted, obtain a money-changing, standard payment institution or major payment institution licence (each, a Payment Services Licence). The definition of DPTs under the PS Act would cover most

cryptocurrencies and stablecoins in the market today, and many cryptocurrency projects and exchanges would require a Payment Services Licence.

Amendments to the PS Act came into force in April 2024. The changes widen the existing scope of services involving DPTs, domestic money transfer and cross-border money transfers, and expand the powers of MAS to impose additional licence conditions and user protection measures on specific DPT service providers (DPTSPs).

Under the amended PS Act, the activities regulated as DPT services can be broadly summarised as:

- dealing in (buying or selling) DPTs;
- facilitating the exchange of DPTs where the service provider comes into possession of the moneys or DPTs involved;
- facilitating the exchange of DPTs where the service provider does not come into possession of the moneys or DPTs involved;
- facilitating the transmission of DPTs from one account to another; and
- custodial services for DPTs.

According to MAS, payment token derivatives which reference DPTs as underlying assets are presently not regulated in Singapore, unless they are offered by an approved exchange under the SFA. That said, the ancillary activities carried out as part of the trade in payment token derivatives will need to be considered since some of these activities could be regulated payment services under the PS Act.

Under the SFA, the regulated activities can be broadly summarised as:

- dealing in capital markets products;
- advising on corporate finance;
- fund management;
- real estate investment trust management;
- product financing;
- providing credit rating services; and
- providing custodial services.

If a person operates an organised market, then such person will also need to apply for approval as an approved exchange or be recognised as a recognised market operator under the SFA.

As mentioned in **1.1 Evolution of the Blockchain Market**, MAS will be implementing a number of measures to enhance retail investor protection and business conduct requirements applicable to DPTSPs regulated under the PS Act. These measures are aimed at addressing concerns that retail customers may not have the financial means to withstand large losses which could arise from speculative trading of DPTs, and address the information disparity that such retail customers may have vis-à-vis DPTSPs.

The new regulatory measures applicable to licensed and exempt DPTSPs include:

- the segregation of customers' assets and safeguarding customers' moneys;
- adopting risk management controls;
- prohibiting facilitation of staking and lending of retail customers' assets;
- the application of consumer access measures to retail customers (whether resident in Singapore or otherwise) which include undertaking a risk awareness assessment;
- the requirement that DPTSPs publicly disclose their listing and governance policies for tokens listed and offered on their platforms;

- establishing complaints handling policies and procedures applicable to retail customers; and
- the implementation of effective and swift recovery strategy for "critical systems".

AML/CFT

Both the SFA and the PS Act also contain various AML/CFT regulations with which companies need to comply. Such operators may be required to set up cybersecurity systems to reduce technological and cyber-risks (see **4.1.4 AML/CTF**).

4.1.2 Licensing

Persons carrying on a business of providing payment services in Singapore which are regulated under the PS Act (for instance, operating a centralised exchange for digital assets which fall within the definition of DPTs) will be required to apply for a Payment Services Licence unless otherwise exempted (**4.1.1 Regulatory Overview**). A major payment institution licence holder will not be subject to the threshold limits on transaction volume or float imposed on standard payment institution licence holders.

As part of the Payment Services Licence application, an applicant will need to submit a number of documents, including:

- audited financial statements (if available);
- an organisational chart of the applicant, including all controlling interests;
- a business plan illustrating compliance with the PS Act requirements and any other applicable legislation;
- legal opinions of the applicant's assessment of whether all relevant tokens constitute DPTs under the PS Act or capital markets products under the SFA; and
- anti-money laundering and countering the financing of terrorism policies and procedures, enterprise-wide risk assessment and implementation plans that illustration compliance with MAS notices PSN01 and/or PSN02.

Persons carrying on a business that falls within the definition of a regulated activity under the SFA (for instance, dealing in digital assets which fall within the definition of capital markets products) will require a capital markets services licence unless otherwise exempted (**4.1.1 Regulatory Overview**).

As part of the application for a capital markets services licence, MAS will consider factors such as:

- the fitness and propriety of the applicant, its shareholders and directors;
- the track record and management expertise of the applicant and its parent company or major shareholders;
- the strength of internal risk management and compliance systems; and
- the business model/plans and projects and associated risks.

Where a person carries on a business of operating an organised market (for instance where digital assets traded on the exchange bear the characteristics of capital markets products), such persons will need to apply to be approved as an approved exchange or be recognised as a recognised market operator.

The following are some admission criteria and applicable requirements which MAS will consider when assessing an applicant applying to be approved as an approved exchange or be recognised as a recognised market operator:

- the market structure and operations in accordance with international standards and best practices;
- the track record, management expertise and financial soundness of the applicant;
- the strength of risk management and accompanying internal controls and systems; and
- corporate governance, fitness and propriety.

4.1.3 Marketing

Generally, under the PS Act, any person, whether in Singapore or elsewhere that is not a licensee or exempt payment service provider under the PS Act, must not solicit for the provision of payment services in Singapore or elsewhere. In determining whether the advertisement is made or issued to the public in Singapore, MAS has prescribed certain non-exhaustive factors which they will consider under the Payment Services Regulations.

Some of these are:

- whether the advertisement contains any information specifically relevant to Singapore;
- whether the advertisement is published in any newspaper, broadcast media, website or circular that is principally for display, circulation or use in Singapore; and
- whether any reasonable step has been taken to guard against the provision of any payment service to any person in Singapore.

MAS has also issued guidelines applicable to digital payment token service providers, banks and other financial institutions which essentially restrict the promotion of DPT services to the general public in Singapore. Under these guidelines, the DPTSPs should not engage in marketing or advertising of DPT services in public areas in Singapore, or through the engagement of third parties such as social media influencers to promote DPT services to the general public in Singapore.

Additionally, MAS has also warned that DPTSPs should not promote payment token derivatives to the public as a convenient unregulated alternative to trading in DPTs.

However, DPTSPs can market or advertise on their own corporate websites, mobile applications or official social media accounts.

4.1.4 Anti-money Laundering and Counter-Terrorism Financing (AML/CTF) Requirements

Businesses are generally obligated under Singapore law to carry out a reasonable standard of KYC and due diligence measures under various pieces of legislation, including the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, the Terrorism (Suppression of Financing) Act, and the Monetary Authority of Singapore Act (with additional requirements for financial institutions). Businesses should take reasonable steps to satisfy themselves that the property received was not owned or controlled by or on behalf of any terrorist or terrorist entity. It is also mandatory for a person, in the course of their business or employment, to lodge a "Suspicious Transaction Report" if they know or have reason to suspect that any property may be connected to criminal activity. The Terrorism (Suppression of Financing) Act imposes a duty on all to provide information pertaining to terrorism financing to the Commissioner of Police in Singapore, with potential criminal penalties for the failure to do so.

The PS Act places additional AML/CFT requirements on licensees that are DPTSPs. These measures include policies, procedures and controls in relation to customer due diligence,

transaction monitoring, screening, suspicious-transactions reporting and record-keeping.

After the FSMA comes into effect, the AML/CFT requirements presently imposed on PS Act licensees will be extended to businesses operating in Singapore or incorporated in Singapore, even where the regulated digital asset services are provided outside of Singapore. To ensure that there is supervisory oversight, applicants for a licence under the FSMA need to have a permanent place of business in Singapore, and the FSMA imposes controls on changes of ownership and leadership of licensees.

If the DT in question is a capital markets product as defined in the SFA, the MAS guidelines on KYC, AML/CFT applicable to capital markets services licence holders will apply instead.

Aside from the above-mentioned legislation, Singapore laws prohibit businesses from engaging in any business or commercial activity, or providing any resources and services for the benefit of sanctioned individuals or entities whose names are contained in the list of designated individuals and entities published by the United Nations Security Council. Hence, to the extent there are any transactions in digital assets, businesses should ensure that they are not dealing with sanctioned entities or individuals.

In addition to complying with the aforementioned prohibitions, financial institutions regulated by MAS (such as DPTSPs) are also required to immediately freeze funds, other financial assets or economic resources of designated individuals and entities.

4.1.5 Change in Control

Generally, the change in control requirements applicable to licensees under the PS Act are substantially similar to those applicable to capital markets services licensees under the SFA. A person cannot become a 20% controller of a licensee without first applying for and obtaining the approval of MAS. Such approval may be subject to conditions as MAS may impose. For instance, it may restrict a person's disposal or further acquisition of shares or voting power in the licensee, or restrict a person's exercise of voting power in the licensee.

4.1.6 Resolution or Insolvency Regimes

MAS has clarified its expectation that digital payment token service providers regulated under the PS Act resolve disputes with their retail customers using any of the principal modes of dispute resolution available in Singapore (eg, mediation, arbitration and litigation in Singapore courts).

FIDReC is an independent alternative dispute resolution institution which facilitates resolution of disputes between consumers and financial institutions subscribed to FIDReC through mediation and adjudication.

While MAS does not require digital payment token service providers to subscribe for the services of Singapore's Financial Industry Disputes Resolution Centre (FIDRec), it has also indicated its support for industry associations to come together to discuss membership arrangements with FIDReC.

4.1.7 Other Regulatory Requirements

During the term where a person is operating in the Sandbox (see **4.3 Regulatory Sandbox**), MAS will adopt a risk-based approach to determine what specific exemptions or regulatory support may be provided to facilitate experimentation within the Sandbox.

4.2 Regulated Firms/Funds With Exposure to Digital Assets

Please refer to **4.1.1 Regulatory Overview**.

4.3 Regulatory Sandbox

MAS offers its FinTech Regulatory Sandbox to encourage local projects to pursue innovative financial products and services within a secure, efficient and low-regulatory-pressure environment.

Three options exist under this programme: Sandbox, Sandbox Express and Sandbox Plus. The first is for more complex business models where customisation is required to balance the risks and benefits of the experiment. The second is for activities where risks are low and well understood by the market, and is reliant on disclosures and predetermined rules, providing a faster option for market testing. Sandbox Plus, introduced in January 2022, expands the eligibility criteria to include early adopters of technology innovation and further provides financial grants for first movers in technology innovation.

Another successful use case of the Sandbox is DigiFT Tech (Singapore) Pte Ltd, a Singapore-based regulated exchange for on-chain real world assets. DigiFT Tech (Singapore) Pte Ltd exited the Sandbox on 30 November 2023 and, as of 1 December 2023, holds a capital markets services licence for dealing in capital markets products that are securities or units in a collective investment scheme and is a recognised market operator under the SFA.

4.4 International Standards

DPT services are considered by MAS to carry higher money laundering and terrorism financing risks due to the anonymity, speed and cross-border nature of their transactions. This view is consistent with the international Financial Action Task Force (FATF) and MAS has aligned local legislation with FATF standards for "virtual asset services providers" – the PS Act covers entities that perform or facilitate the exchange of virtual assets, virtual assets custodial services and financial services related to the offering and sale of virtual assets by introducing AML/CFT requirements for such services. Where companies facilitate the transfer of DPTs or provide custodian wallet services as part of their business, MAS requires that they apply AML/CFT measures to mitigate the risks posed by such services in line with global FATF standards. These requirements are further detailed in MAS's Notice to Payment Services Providers (DPT Service) on Prevention of Money Laundering and Countering the Financing of Terrorism.

FSMA

To fully align itself with the FATF standards, Singapore has enacted the FSMA for the financial sector, which will regulate DT services. The FSMA was passed into law in April 2022 and the relevant sections applicable to DT service providers will come into force on a date that is yet to be determined.

The scope of the FSMA encompasses "DTs", which will include DPTs regulated under the PS Act and digital representations of capital markets products regulated under the SFA. The FSMA intends to broaden the scope and regulatory burden of the AML/CFT requirements for service providers that provide the following services:

- dealing in DTs;
- facilitating the exchange of DTs where the service provider comes into possession of moneys or DTs involved;
- facilitating the exchange of DTs where the service provider does not come into possession of the moneys or DTs involved;

- facilitating the transmission of DTs from one account to another;
- custodial services for DTs; and
- advisory services relating to the offer or sale of DTs.

To ensure adequate supervisory oversight, the FSMA provides that any entity offering DT services outside of Singapore from a place of business in Singapore, and any Singapore corporation carrying on a business anywhere in the world that provides any DT service outside of Singapore, must have their overseas activities held to similar regulatory standards as their Singapore operations. This aligns the position in Singapore with the enhanced FATF standards, which require DT service providers to at least be licensed in the jurisdiction of their creation to prevent a regulatory lacuna for entities which offer their services outside of their jurisdiction of creation.

The FSMA, in line with international standards, will impose ongoing AML/CFT requirements on licensees and will enhance MAS's regulatory oversight over such licensees, given their nexus to Singapore (see **4.1.4 Anti-money Laundering and Counter-Terrorism Financing (AML/CTF) Requirements**).

4.5 Regulatory Bodies

MAS, Singapore's central bank and integrated financial regulator, oversees the enforcement of the SFA and the PS Act, as discussed in **4.1.1 Regulatory Overview**, and will also oversee the enforcement of the FSMA once it comes into effect, as discussed in **4.4 International Standards**.

4.6 Self-Regulatory Organisations

Singapore is home to a number of trade groups, such as the Blockchain Association of Singapore, which is designed to be a platform for members to engage with various stakeholders in the scene to discover solutions and promote best practices.

4.7 Other Government Initiatives

The Singapore government has expressed its intention to support digital innovations such as blockchain. Aside from MAS, the IMDA also plays a key role in fostering the conditions necessary for eventual mainstream adoption (see **1.1 Evolution of the Blockchain Market**).

One example of this is the Singapore Blockchain Innovation Programme (SBIP), a SGD12 million research programme organised by Singapore's government agencies (Enterprise Singapore, the IMDA, and the National Research Foundation Singapore) and supported by MAS. SBIP focuses on blockchain technology to develop, commercialise and encourage the adoption of blockchain technology by companies in trade, logistics and the supply chain.

MAS had also engaged the industry via Project Ubin, which explored applying blockchain technology to payments and settlements. A payments network prototype was developed in collaboration with J.P. Morgan and Temasek and will continue to serve as a test network to facilitate collaboration with other central banks and the financial industry. The findings from the project were positive and illuminated the potential benefits blockchain and distributed ledger technology could bring to payments and settlements.

Under Project Guardian, MAS is also testing applications of asset tokenisation and DeFi through industry pilots. In November 2022, a live test trade of tokenised government bonds and foreign exchange was carried out on Pro-

ject Guardian's public blockchain using liquidity pools comprising of tokenised Singapore government securities bonds, Japanese government bonds, Japanese yen and Singapore dollars. To name a few industry pilots underway, Franklin Templeton is launching a pilot to explore the issuance of tokenised money market fund through a variable capital company structure, DBS Bank, SBI Digital Asset Holdings and UBS AG are executing a pilot repurchasing agreement with natively issued digital bonds, and BNY Mellon and OCBC are trialling a cross-border foreign exchange payment solution using smart contracts which enable blockchain interoperability.

MAS also launched Project Orchid, which is a multi-year, multi-phase exploratory project examining the various design and technical aspects pertinent to the digital Singapore dollar. As part of the initiative, Project Orchid will investigate the optimal ledger technology which should be used, as well as its ease of integration with the existing financial market infrastructure. In November 2023, MAS published the Orchid Blueprint, which outlines design considerations for the design and use of digital money-based services in Singapore, drawing insights from ongoing experiments and feedback from the participants.

5. Disputes

5.1 Judicial Decisions and Litigation

The Quoine Case

The Singapore Court of Appeal in the Quoine case applied existing laws on contract to cryptocurrencies. The Court analysed the terms and conditions of the agreement between users and the digital assets exchange operating entity, and recognised that a contractual relationship between buyers and sellers existed when a trade is executed on the digital assets exchange even though that contractual relationship was represented by a smart contract. It was established that even though the contracts between the buyer and seller were smart contracts, ordinary contract principles such as the doctrine of unilateral mistake and equitable mistake at common law still applied. The court then proceeded to analyse the facts of the case utilising traditional legal principles.

The Shiki Entertainment Case

A case currently being litigated involves a company (Shiki Entertainment) suing its landlord for entering its rented industrial unit without notice and cutting off the unit's power supply following concerns about high electricity consumption. The rented unit was being used as a cryptocurrency mining farm. The case is the first in Singapore to consider lost profits possibly earned from cryptocurrency mining and will raise questions over how such losses can be quantified in terms of fiat currency. At first instance, the Singapore District Court found that the company had failed to prove its claim for damages, given that the company would have suffered the damages for lost profits and income even if the landlord had provided notice. Hence, the Singapore District Court did not have the opportunity to consider how the losses could have been quantified in fiat currency. However, the case is now on appeal to the Singapore High Court.

The ByBit Fintech Case

The judge in the Bybit Fintech case ruled that USDT is property capable of being held on trust. The case involved the theft of a number of USDT by the claimant's ex-employee. The judge observed generally that, in principle, the holder of a crypto-asset has an intangible property right that is enforceable in court. The reason is twofold. Firstly, it clearly satisfies the

traditional Ainsworth definition of property rights – property rights must be definable, identifiable by third parties, capable of being assumed by third parties and have some degree of permanence or stability. Secondly, it is properly considered a thing in action. In particular, by rejecting the argument that crypto-assets should not be classified as things in action because there is no individual counterparty to the right of holders of such crypto-assets, the High Court recognised that the category of things in action has been expanded over time to include ultimately incorporeal rights such as copyrights.

5.2 Enforcement Actions

In relation to a claim over stolen cryptocurrencies, the Singapore High Court, in CLM v CLN and others [2022] SGHC 46 (CLM v CLN), granted a proprietary injunction and a worldwide freezing injunction to prevent the dissipation of allegedly stolen cryptocurrencies against unidentified persons believed to have participated in or assisted with the alleged theft. The Singapore High Court also ordered two cryptocurrency exchanges to provide information and documents relating to the accounts which were credited with some of the allegedly stolen cryptocurrencies.

On 13 May 2022, the Singapore High Court issued a worldwide proprietary injunction to block any potential sale and ownership transfer of a unique Bored Ape Yacht Club NFT (BAYC No 2162) (BAYC NFT) against an unknown person known as "Chefpierre". Following an application by Rajkumar, the High Court granted the worldwide proprietary injunction described above. As at the time of writing (June 2024), based on publicly available information, such injunction has not been contested.

In the case of Rio Christofle v Tan Chun Chuen Malcolm [2023] SGHC 66, an issue arose as to whether the sale of Bitcoin between certain parties to the agreement was illegal under the PS Act and thus unenforceable. The Court highlighted that what was key was whether the person was carrying on a business of providing a type of payment service in Singapore without the relevant licence. The Court identified the following non-exhaustive indicia to assist in ascertaining whether a person was carrying on a business of providing a type of payment service in Singapore:

- whether a profit had been made;
- the number of transactions in question; and
- the role which the accused played in the transactions.

In the context of insolvency proceedings, the location of the asset is often of utmost importance in order to establish that there was sufficient nexus to the relevant jurisdiction. Cheong Jun Yoong v Three Arrows Capital Ltd and others [2024] SGHC 21 providedmuch needed clarity on ascertaining the location of a digital asset. In that case, the High Court held that the location of a digital asset was best determined by looking at where it was controlled. Hence, the residence of the person who controls the private key of the wallet holding the digital assets would be treated as the location of the digital asset.

6. Tax

6.1 Tax Regime

Taxation matters in relation to use of blockchain or cryptocurrencies are covered under existing tax legislation in Singapore, principally the Income Tax Act and the Goods and Services Tax Act (the "GST Act"). The Inland Revenue Authority of Singapore (IRAS) has also released specific

e-tax guides outlining how the legislation applies to blockchain and cryptocurrency matters.

Revenue for Goods or Services Using Cryptocurrency

Businesses that accept cryptocurrency as consideration for goods or services are subject to taxes on their income as set out in the Income Tax Act. These transactions would be considered as barter trade and the relevant revenue based on the value of the goods or services provided. Taxation would be based on net profits (after deducting allowable expenses under the Income Tax Act). Currently, the general tax rate for businesses stands at 17% of taxable income.

Investing and Trading in Cryptocurrency

Individuals or businesses that buy and sell cryptocurrencies as part of their business will be charged income tax on profits derived from trading in cryptocurrency. Profits derived by individuals or businesses which mine and trade cryptocurrency in exchange for money are also subject to income tax, as these would be considered "revenue".

However, individuals or businesses that invest in cryptocurrency for long-term investment purposes may be exempt from income tax on the disposal of these cryptocurrencies, as these would be considered capital gains rather than revenue. As there are no capital gains taxes in Singapore, these gains are not subject to tax.

Distinguishing these two situations depends on the facts and circumstances of each case. Factors such as purpose, frequency of transactions, and holding periods are considered when determining if such gains from the disposal of cryptocurrencies are taxable.

Taxes on Proceeds of an ICO

Taxes on initial coin offering (ICO) proceeds are dependent on whether the proceeds are considered as revenue and sourced in Singapore.

Generally, for an ICO of a utility token, ICO proceeds will be treated as deferred revenue (and hence taxable under the Income Tax Act). Whereas for an ICO of a security token, ICO proceeds will be capital in nature and thus not taxable.

To ascertain if the activities giving rise to the ICO proceeds are carried on in Singapore and if the income would be determined to be sourced in Singapore, the following factors (among others) would be considered:

- whether the company has a physical presence in Singapore;
- where and how the marketing and promotion of the ICO is conducted;
- whether the participants in the ICO are predominantly based in or out of Singapore; and
- whether the developers behind the blockchain technology are based in or out of Singapore.

Goods and Services Tax on the Sale of Cryptocurrency

Singapore has a value-added tax regime under the GST Act, whereby GST is levied on the supply of goods and services in Singapore, and the import of goods into Singapore. GST is an indirect tax applied to the selling price of goods and services provided by GST-registered business entities in Singapore. The current rate of GST is 9%.

The supply of cryptocurrency that falls within the definition of "DPTs" under the GST Act is no longer subject to GST. Specifically, the use

of cryptocurrency as payment for goods or services will no longer be construed as a supply of a service and thus the user need not account for GST on their use. Furthermore, a supply of DPTs in exchange for fiat currency or other DPTs, and the provision of any loan, advance or credit of DPTs, will be exempt from GST.

However, uncertainties remain where tokens do not fall within the definition of DPTs under the GST Act. In such a scenario, it is possible that GST can apply to the supply of such tokens.

7. Sustainability

7.1 ESG/Sustainable Finance Requirements

As at the time of writing, there is no ESG/sustainable finance-specific legislation which applies to digital assets in Singapore.

8. Data Privacy and Protection

8.1 Data Privacy

The main legislation governing privacy and data protection in Singapore is the Personal Data Protection Act (PDPA).

Under the PDPA, companies have an obligation to protect personal data in their possession or control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks against that data. Personal data may cover different types of data about an individual, including data from which an individual could be identified, even if that data was false and regardless of the form in which it is stored. Hence, the storage, collection, provision of access to, or otherwise control of, personal data belonging to natural persons, whether through the use of blockchain technology or otherwise, could attract PDPA obligations. The reasonableness of security arrangements on an objective basis, which would include people and processes factors, could be relevant in assessing PDPA compliance. This should be considered together with KYC processes.

There has been no case law or enforcement action to date on the application of the PDPA to blockchain networks. However, unlike the EU's General Data Protection Regime (GDPR), the PDPA does not contain a "right to be forgotten", which is one of the key conflict points between "immutable" blockchain networks and the GDPR. As such, it is anticipated that with careful planning, and the incorporation of "data protection by design" considerations early in the system architecture and design stage, blockchain-based products and services will be able to fully comply with the PDPA.

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