Capital markets products

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The SFA defines capital markets products in s. 2(1) as securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as MAS may prescribe.[1] Each category has its own test and a token may satisfy more than one.

Securities are shares, debentures and units in a business trust, together with instruments conferring rights to acquire them. A token that represents a share in a company, whether the company is incorporated in Singapore or abroad, is a security. A token that evidences a debt owed by the issuer, whether called a bond, a note or a "yield token", is a debenture unless it falls within an exclusion. The classic test cases from the ICO era were tokens that promised a share of the issuer's profits without any equity. MAS treated such tokens as debentures where the promise amounted to an acknowledgement of indebtedness. Where the holders' money was pooled and managed for a return, it treated them as units in a collective investment scheme.[2]

Units in a collective investment scheme (CIS) are the category that captures most investment-style tokens. The definition in s. 2(1) requires an arrangement with four features. Participants do not have day-to-day control over the management of the property. The property is managed as a whole by or on behalf of the manager. The

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contributions and profits are pooled. The purpose or effect is to enable participants to receive profits or income from the acquisition, holding, management or disposal of the property.[3] A token whose proceeds fund a portfolio of other tokens managed by the issuer, a tokenised real estate fund, a "treasury token" whose value tracks a managed pool of assets and an index token are all units in a CIS. The consequence is severe. A CIS may not be offered to retail investors in Singapore unless it is authorised (for a Singapore scheme) or recognised (for a foreign scheme) by MAS. The manager must hold a capital markets services licence for fund management.

Derivatives contracts are the third category. A token whose value is derived from an underlying asset, index or rate and that is settled by payment of the difference is a derivatives contract. Perpetual futures, options and synthetic tokens that track the price of a share or a commodity fall here. Dealing in such contracts requires a capital markets services licence. The Payment Services Act does not apply because the product is not a medium of exchange.

Example

A Singapore private company tokenises its ordinary shares so that investors can hold and transfer them on a public blockchain. The tokens are securities. The offer of the tokens to investors is an offer of shares under Part 13 SFA and requires a prospectus unless an exemption applies. The company must keep its register of members in accordance with the Companies Act 1967. The blockchain is therefore at most a record of beneficial interests or a mirror of the register, the "digital twin" problem discussed in Part B, Chapter V. Any platform on which the tokens trade is operating a market and needs approval or recognition under Part 2 SFA. A custodian holding the tokens for investors needs a capital markets services licence for providing custodial services. None of this is changed by the fact that the tokens exist on a blockchain.

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Notes

1. Securities and Futures Act 2001, s. 2(1), definition of "capital markets products". ↩
2. MAS, Guide to Digital Token Offerings (2020), Part B and Appendix case studies 1 to 11, applying the securities, debenture and collective investment scheme definitions to hypothetical tokens. ↩
3. SFA, s. 2(1), definition of "collective investment scheme", paras (a) and (b), and the exclusions in the same definition. ↩

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