MAS's regulatory philosophy

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MAS describes its approach with a set of phrases that recur in every consultation paper and that a practitioner should learn to decode. "Same risk, same regulation" means that a product or activity is regulated according to the economic function it performs and the risks it creates, whatever technology delivers it. A token that gives the holder a share of profits is a security and is regulated as one. A token that functions as a means of payment is regulated for money-laundering risk as a payment instrument. "Activity-based" and "technology-neutral" are the two halves of the same thought. "Risk-proportionate" means that the intensity of regulation scales with the risk, which is why the Payment Services Act 2019 has a standard payment institution licence for small operators and a major payment institution licence above the thresholds. "Regulation should not front-run innovation", a phrase Menon used for a decade, means that MAS prefers to let a new activity emerge and study it before deciding whether and how to regulate. In the meantime it relies on warnings to consumers and on the existing perimeter.[1]

Those phrases are more than slogans because they predict outcomes. A founder who can show MAS that a new product performs an economic function the regulator already understands will be told which existing licence applies. A founder whose product performs no function the regulator recognises, a governance token with no

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economic rights for example, will be told that it falls outside the perimeter. That founder receives no licence, no comfort letter and no protection against a later change of view. The Swiss reader will recognise the method from FINMA's ICO Guidelines of 2018, which likewise classify by economic function. Part B, Chapter III compares the two taxonomies in detail. The difference lies in the attitude to the unregulated. FINMA will issue a reasoned no-action response to a formal request (Unterstellungsanfrage) for a fee. MAS, as a rule, will not confirm in writing that an activity is unregulated and expects the applicant to form its own view with counsel.

Client question

"Can we get a letter from MAS saying our token is not regulated?" The honest answer is that MAS does not issue no-action letters of the Swiss type. What you can obtain is a pre-application meeting in which MAS staff hear the proposal and indicate, without commitment, which regime they think applies. What you should obtain is a reasoned opinion from Singapore counsel, which you keep on file, so that if MAS later takes a different view you can show that you acted on advice and in good faith. In a borderline case the opinion is more valuable than a meeting, because a meeting leaves no record you can rely on. Part K, Chapter X describes the pre-application process in full.

MAS's development role expresses itself in the FinTech and Innovation Group, created in 2015, in the regulatory sandbox launched in 2016 and expanded in 2019 and 2022, in direct grants to financial institutions under successive Financial Sector Development Fund schemes and in the Singapore FinTech Festival, which MAS founded in 2016 and which has become the largest event of its kind. The sandbox allows a firm to test a product with real customers under relaxed requirements for a limited period, and its "Sandbox Express" variant offers a fast track for activities whose risks are well understood.[2] The sandbox has been used sparingly for crypto, because MAS has preferred to decide perimeter questions on the general law, but it has been the home of several tokenisation and payments pilots.

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Notes

1. Ravi Menon, "Yes to Digital Asset Innovation, No to Cryptocurrency Speculation", opening address at the Green Shoots Seminar, Singapore, 29 August 2022 (published by MAS and reproduced by the Bank for International Settlements on 30 August 2022); for the earlier formulation of the regulatory philosophy see Ravi Menon, "Singapore's FinTech Journey – Where We Are, What Is Next", Singapore FinTech Festival, 16 November 2016. ↩
2. MAS, "FinTech Regulatory Sandbox Guidelines", first issued 16 November 2016, revised with the introduction of Sandbox Express on 7 August 2019 and Sandbox Plus on 1 January 2022. ↩

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