Non-fungible tokens

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Outside the perimeter unless securities

MAS stated its position on NFTs in a Parliamentary reply in February 2022, at the height of the NFT market. The Senior Minister and Minister in charge of MAS said that MAS does not regulate NFTs as such. An NFT representing a unique digital collectible is outside the SFA and the Payment Services Act. The position changes if the NFT has the characteristics of a capital markets product, such as a fractionalised interest in a pool of assets or a right to a share of profits.[1] The position has not changed. An NFT that is a unique representation of a work of art, a membership or an in-game item is not a DPT, because it is not a medium of exchange. It is not a capital markets product either, because it confers no investment right.

Three structures bring an NFT within regulation. The first is fractionalisation. Suppose an NFT is divided into fungible tokens that represent shares in the NFT and are sold to investors with the expectation of profit from its appreciation. The fungible tokens are then units in a collective investment scheme or, if the NFT is held through a company, shares in that company.[2] The second is a profit right. An NFT that entitles the holder to a share of revenue from the underlying work, from a protocol or from a business is a debenture or a CIS unit. The third is fungibility in substance. A collection of ten thousand "unique" NFTs that are in fact

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interchangeable, traded for their floor price and marketed as an investment is closer to a fungible token than to a collectible, and MAS has reserved the right to look through the form.

NFT platforms

An NFT marketplace that matches buyers and sellers of collectibles for a fee is not providing a DPT service, because the NFTs are not DPTs. It is providing a DPT service if it also facilitates the exchange of the DPTs in which the NFTs are priced, for example by operating a wallet in which users hold ether to buy NFTs, or by converting fiat to tokens for users. Most NFT platforms in Singapore have therefore either partnered with a licensed DPT provider for the payment leg or required users to bring their own wallets. The marketplace is also subject to the general law on consumer protection, intellectual property and the Personal Data Protection Act 2012, and to the AML analysis that applies to any dealer in high-value goods.[3]

The AML point deserves emphasis. An NFT is not a DPT and an NFT marketplace is not a financial intermediary under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992. It is nonetheless a vehicle through which value can move with weak identification. The Suspicious Transaction Reporting Office has flagged NFT wash trading and self-dealing as laundering typologies. A platform that ignores the pattern exposes its directors to the general money laundering offences in that Act, which apply to anyone who deals with the proceeds of crime (see Part L, Chapter IV).[4]

Practice note

If you operate an NFT platform in Singapore, you can stay outside the licensing regime by keeping to three rules. Do not hold users' tokens or fiat: let users connect their own wallets and settle on chain. Do not offer any product in which an NFT is split into fungible units or carries a revenue right, unless you have had it analysed under the SFA. Do not treat the absence of a licence as the absence of AML duties. Screen the counterparties and the collections for sanctions exposure and wash

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trading, and keep records. If your platform grows to include a token wallet, a fiat on-ramp or a lending feature against NFTs, each addition brings you closer to the Payment Services Act and should be reviewed before launch.

Notes

1. MAS, Reply to Parliamentary Question on the regulation of non-fungible tokens, February 2022, by the Senior Minister and Minister in charge of MAS, stating that MAS does not regulate NFTs that represent unique digital collectibles but will apply the SFA where an NFT has the characteristics of a capital markets product. ↩
2. SFA, s. 2(1), definitions of "collective investment scheme" and "securities", applied to fractionalised interests in a single asset; MAS Guide to Digital Token Offerings (2020), case studies on tokens representing interests in assets. ↩
3. Consumer Protection (Fair Trading) Act 2003; Copyright Act 2021; Personal Data Protection Act 2012; see Part J, Chapters III and IX. ↩
4. Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992, ss 50 to 54 (money laundering offences as renumbered in the 2020 Revised Edition), and s. 45 (duty to report suspicious transactions). ↩

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