The Financial Services and Markets Act 2022 as umbrella

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

Singapore's financial legislation grew Act by Act. The Banking Act 1970, the Insurance Act 1966, the Securities and Futures Act 2001 and the Financial Advisers Act 2001 each regulate one sector. So do the Trust Companies Act 2005 and the Payment Services Act 2019, each with its own licence, its own conduct rules and its own enforcement provisions. The Financial Services and Markets Act 2022 was conceived as a horizontal statute that sits above these sectoral Acts and carries powers MAS wished to exercise across all of them. It was passed by Parliament on 5 April 2022 and has been brought into force in stages since 2023.[1]

Four groups of provisions matter for digital assets. The first is Part 9, which creates the licensing regime for digital token service providers who operate from Singapore but serve customers only outside Singapore, a regime examined in Part K, Chapter V and summarised in Chapter III below. Section 137 forbids an individual or partnership from carrying on, from a place of business in Singapore, a business of providing a digital token service outside Singapore without a licence. It forbids a Singapore corporation from carrying on such a business whether from Singapore or elsewhere. Section 136 defines a digital token as a digital payment token within the meaning of section 2(1) of the Payment Services Act 2019 or a digital representation

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of a capital markets product within the meaning of the Securities and Futures Act 2001.[2] The exemptions in section 137(5) ensure that a person already licensed or exempted under the sectoral Acts for the same activity does not need a second licence.

The second group is the harmonised power to issue prohibition orders. Before 2022 MAS could bar a person from the financial industry only under the Act that governed the sector in which the misconduct occurred. A fund manager banned under the Securities and Futures Act could in theory reappear as a payment services director. Part 7 of the Financial Services and Markets Act 2022 lets MAS prohibit a person from performing any role in any regulated financial institution, including a digital payment token licensee, where the person is not fit and proper. The third group gives MAS a statutory basis to issue technology risk management requirements to all financial institutions and to impose penalties for breaches, which matters for exchanges and custodians whose central risk is cyber. The fourth group harmonises the anti-money-laundering and countering-the-financing-of-terrorism powers across sectors and provides the legal basis for MAS notices on those subjects to be issued to any class of institution.[3]

The Act is called an "umbrella" in MAS's own description. The metaphor is apt in one respect and misleading in another. It is apt because the Act covers every regulated person regardless of sector. It is misleading because the Act does not replace the sectoral licences. A digital payment token business still needs its licence under the Payment Services Act 2019, a tokenised-securities exchange still needs recognition under the Securities and Futures Act 2001 and a trust company holding tokens still needs its licence under the Trust Companies Act 2005. The Financial Services and Markets Act 2022 adds a layer of powers and, for the overseas-only provider, one new licence. It takes nothing away.

Notes

1. Financial Services and Markets Act 2022 (Act 18 of 2022), passed by Parliament on 5 April 2022; commencement in phases by notification, the

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first tranche with effect from 28 April 2023 and Part 9 with effect from 30 June 2025. ↩

2. Financial Services and Markets Act 2022, s. 137(1), (3), (5) and (6) (licensing of digital token service providers; exemptions for persons licensed under the Securities and Futures Act 2001, the Financial Advisers Act 2001 or the Payment Services Act 2019; penalties) and s. 136(1) (definitions of "digital token", "digital payment token" and "digital token service"), text as published on Singapore Statutes Online. ↩

3. Financial Services and Markets Act 2022, Part 7 (prohibition orders), Part 5 (technology risk management) and Part 4 (anti-money laundering and countering the financing of terrorism). ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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