CRYPTOCURRENCIES & FINTECH REGULATORY UPDATE IN SOUTHEAST ASIA (SINGAPORE, MALAYSIA AND THAILAND)

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Authors: Quek Li Fei and Yeo Tun Zen.

This article updates a previous article published in CNP Update on 23 May 2020 on the regulatory approach to cryptocurrency and digital assets in Southeast Asia, in particular, in Singapore, Malaysia and Thailand.

Singapore

On 28 January 2020, the Payment Services Act 2019 (the "PS Act") came into effect which required operators of digital payment token exchange services to apply to the Monetary Authority of Singapore ("MAS") for either (a) a standard payment institution licence; or (b) a major payment institution licence. The provisions of the Act also regulate and impose Anti-Money Laundering ("AML") and Counter Financing Terrorism ("CFT") measures under the PS Act. To-date, and in the course of 2021, the MAS has granted payment institution licences to two entities, namely a Singapore fintech firm, Fomo Pay and Australian cryptocurrency exchange, Independent Reserve. Further, DBSVickers, the brokerage arm of DBS Bank Ltd, has received formal approval from the MAS to provide digital payment token services as a major payment institution. The MAS has also notified several digital payment token service providers under the PS Act that the MAS is prepared to grant regulatory consent for them to operate in Singapore. The grant of the said payment institution licenses and announcements by the MAS reflects Singapore's open-minded receptiveness to and prudent regulatory attitude to the integration of digital tokens and cryptocurrency into Singapore's burgeoning financial services sector.

On 21 July 2020, the MAS issued a consultation paper on the new Omnibus Act for the Financial Sector (the "Paper"). The proposed Paper aims to expand the authority and regulatory powers of the MAS to require further compliance with tighter AML and CFT policies, as well as to harmonize its policies in line

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with the International Standards of Combating Money Laundering and the Financing of Terrorism & Proliferation of the Financial Action Task Force ("FATF") Recommendations (the "FATF Recommendation(s)"), and in particular, Recommendation 15 of the FATF Recommendations in relation to Virtual Asset Services Providers ("VASP(s)").

Some of these extended powers include tighter regulation on VASPs to ensure compliance with the international standards of the FATF. Specifically, the MAS will require local VASPs to comply with the FATF Travel Rule (viz. FATF Recommendation 16) to better harmonise the AML and CFT policies implemented by other countries that are also committed to implement the FATF Travel Rule in their own jurisdiction.

The Paper also seeks to extend the MAS' powers to require AML and CFT compliance in both foreign VASPs and local VASPs with operations overseas, and ensure that the compliance policies are aligned with the same policies in Singapore, and that of the international standards set out by FATF Recommendations.

Malaysia

In 15 January 2020, the Malaysian Securities Commission ("SC") released their revised Digital Assets Guidelines (the "Guidelines") which seek to facilitate the regulation of digital assets through digital assets exchange platforms (the "Platforms") by way of Initial Exchange Offerings ("IEOs"). The rationale for the Guidelines is to ensure stringent due diligence by and transparency of the intended tokens issuers, and to place the onus on the Platforms to conduct their due diligence, AML and CFT checks on interested token issuers.

On 28 October 2020, the Guidelines came into force pursuant to Section 377 of the Capital Markets and Services Act 2007. Therefore, Platforms that have not been registered as a Recognised Market Operator ("RMO(s)") will not be able to issue their digital tokens except by way of an IEO in Malaysia.

As at 29 July 2021, the SC has registered four (4) RMOs in Malaysia, which are:

- Luno Malaysia Sdn. Bhd.;
- MX Global Sdn Bhd;
- SINEGY Technologies (M) Sdn. Bhd.; and
- Tokenize Technology (M) Sdn. Bhd.

On 31 December 2020, the Bank Negara Malaysia ("BNM") issued a policy document on Licensing Framework for Digital Banks (Digital Banking Framework) (the "Framework") to tap on the innovative applications of technology of digital banks for individual and businesses in Malaysia.

Whilst the policy document signals an increased focused on providing access to a wider market in Malaysia, the Framework seeks to adopt a balanced approach to maintain and protect the integrity and stability of the country's financial system whilst encouraging further advancement of technological innovation in Malaysia.

It is expected that up to five such licences may be issued to qualified applicants.

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Thailand

On 14 May 2018, Thailand's enacted the Emergency Decree on Digital Asset Business, BE 2561 2018 ("REDA") to regulate ICOs and businesses trading in cryptocurrencies, and specifies digital assets as a new asset class to be regulated under Thai law. Digital assets, (viz. cryptocurrencies and digital tokens), are divided into (a) the governing of the offering of digital tokens and (b) the governing of digital asset business operators.

REDA has established the "ICO Portal" which is a key part of Thailand's regulatory regime for ICOs, to assist REDA to ensure that token issuers comply with AML and CFT policies, conduct due diligence on the characteristics of the digital assets to be offered and on the qualifications of the token issuer, ensuring completeness and accuracy of information contained in the registration statements, draft prospectus or any other information to be disclosed through the ICO portal, proving smart contract source codes and verifying the token issuer's know-your-customer process.
The main authority in charge of supervising REDA is the office of the Securities and Exchange Commission ("SEC").

The SEC has approved six entities as licensed ICO Portals in Thailand. The six (6) registered ICO Portals are:

- Ruth Long Company (Thailand) Limited (a.k.a Longroot);
- T-Box (Thailand) Co., Ltd. (a.k.a T-BOX);
- Xspring Digital Company Limited (a.k.a XSPRING Digital);
- Bitherb Co., Ltd. (a.k.a BiTherb);
- Kubix Digital Asset Co., Ltd; and
- Fraction (Thailand) Co., Ltd.

On 19 March 2021, the Bank of Thailand ("BOT") released BOT Press Release No. 16/2021 which relates to Stablecoins Regulation Policy. In this policy, BOT has concluded that tokens pegged to the Thai Baht currency will be governed under Thailand's Payment System Act BE 2560 2017 and will be categorised as e-Money.

With regard to other digital tokens pegged to foreign currency or other assets, the BOT states that these digital tokens are currently unregulated and the BOT is open to receive comments and feedback before considering and issuing any appropriate regulatory guidelines.

The BOT has mentioned that Thailand is ready to embrace new innovations to improve financial services and is currently in the process of developing a Retail Central Bank Digital Currency. This means that Thailand will provide their regulation in relation to stablecoins and that Thailand's own digital currency is intended to be used as digital legal tender similar to the Digital Yuan in China.

On 11 June 2021, the SEC issued the Notification of the Securities and Exchange Commission No. Kor Thor. 18/2564 Re: Rules, Conditions and Procedures for Undertaking Digital Asset Businesses (No. 11) (the

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“Notification”) which restricts the type of digital assets that digital asset exchanges may list on their platform such as meme tokens (i.e. Doge coins) and Non-Fungible Tokens (i.e. NFTs). The Notification requires compliance with any rules set by the SEC by 10 July 2021 or the digital assets may be subject to delisting from the digital asset exchanges.

Conclusion

Singapore, Malaysia and Thailand have each demonstrated that they are open to the adoption of cryptocurrency and digital assets as part of their respective financial economy, but with an increased emphasis on incorporating clear AML and CFT policies. The move toward more stringent regulatory policies, as well as a better defined categorisation of the different type(s) of digital assets, will encourage and allow retail users and business to have more confidence in digital assets and help usher digital assets into the mainstream markets with increased usage.

Our Services at CNPLaw LLP

We have a particular passion and interest in blockchain technology applications, cryptocurrencies, ICOs (including IEOs and STOs {collectively "ICOs"}). Please feel to contact us should you have any queries.

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