

# NFTS - PART THREE

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### NFTs - Part Three

This is the third article in our series of articles on Non-Fungible tokens (“NFTS”) following upon our previous two articles titled “[Non-fungible tokens and their legal implications](#)” published on 27 May 2021 and “[Non-fungible tokens \(“NFTs”\): developments and legal issues](#)” published on 5 August 2021. Our first article introduced some basic terminology, and highlighted key legal and regulatory issues relating to NFTs. Our second article provided a deeper dive into the fundamental distinctions between intellectual property rights and ownership for a holder of an NFT which in essence, is that ownership of an NFT may not necessarily convey the transfer of copyright ownership to the underlying asset (specifically a work of art) unless such transfer of copyright ownership is expressly included and embedded in the NFT’s “smart contract” terms.

Short recap – NFTs, unlike other digital tokens or cryptocurrencies such as Bitcoin and Ethereum, are “non-fungible”, which means that each NFT bears unique characteristics, is not identical to another NFT nor replaceable by another NFT identical item and is therefore not mutually exchangeable. During the NFT mania in 2021, NFTs to digital art pieces such as “Everydays: The First 5000 Days” by Mike Winkelmann (a digital artist known as Beeple) was sold for \$93 million. More recently, on 9 September 2021, a set of 107 digital apes called “Bored Ape Yacht Club” sold for US\$24.4 million at Sotheby’s.

NFTs can also be pegged to physical collectible items. For example, Coinlectibles, an online platform enables users to mint NFTs from a physical collectible such that the resultant NFT (termed a “Fusion NFT”) represents ownership to the token as well as to the physical collectible.

### Legal categorization of NFTs under the laws in Singapore

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As at the date of writing this article, NFTs are not regulated by the Monetary Authority of Singapore (“MAS”) as NFTs in their true nature and form would not constitute either securities or capital market products nor digital payment tokens. However, MAS’ regulatory approach to digital tokens in Singapore has been to look beyond the label (and form) given to a digital token and consider the substance, including the characteristics and nature of the digital token in determining the legal categorization of a digital token.

Below is a paragraph from our first article with the definition of a “digital payment token”:

The Payment Services Act of 2019 (“PS Act”) defines “digital payment token” to mean:

*“any digital representation of value (other than an excluded digital representation of value) that – (a) is expressed as a unit; (b) is not denominated in any currency, and is not pegged by its issuer to any currency; (c) is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt; (d) can be transferred, stored or traded electronically; and (e) satisfies such other characteristics as the Authority may prescribe”*

Based on the above, although it appears that the definition of a “digital payment token” mainly applies to fungible tokens, it may be possible for certain types of NFTs, depending on the relevant factual circumstances (such as its usage and attributes) and underlying digital file, to fall within the definition of a “digital payment token”. Correspondingly, the relevant provisions within the PS Act may be applicable to NFTs which constitute digital payment tokens.

It should be noted that an NFT may in certain instances, depending on its intended use cases and functions be categorised as a “limited purpose digital payment token” under the PS Act and services dealing in or facilitating the exchange of any “limited purpose digital payment token(s)” will be exempted from the requirement under the PS Act to obtain a payment institution licence. The definition of a “limited purpose digital payment token” in Part 3 of the First Schedule of the PS Act is “any non-monetary customer loyalty or reward point(s), any in game asset(s) or any similar digital representation of value that:

(A) cannot be returned to its issuer, transferred or sold in exchange for money; and

(B) may only be used:

- in the case of non-monetary customer loyalty or reward point(s) - for the payment or part payment of, or in exchange for, goods or services, or both, provided by its issuer or any merchant specified by its issuer; or
- in the case of an in-game asset - for the payment of, or in exchange for, virtual objects or virtual services within an online game, or any similar thing within, which is part of or in relation to, an online game”.

However, we are also cognizant that the myriad possible structures and components built into certain NFTs may result in their being categorized a “security”, “capital markets product” or as a unit in “collective investment scheme” under the Securities and Futures Act. For example, if an NFT offers the owner the

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ability to "fractionalise" and sell ownership of the underlying asset (viz. to allow several investors to invest in the NFT and the underlying asset by purchasing the NFT and thereafter split ownership so that each purchaser of the fractionalised NFT will have a fractionalised right to enjoy the benefits of owning the fractionalised NFT whereby the fractional owner's ownership to the underlying asset will be proportionate to the "fractionalised" NFT which they own), it is possible that such NFT and the selling of such NFT may result in the particular NFT being a digital token which would come under the purview of laws and regulations administered and overseen by the MAS.

### **NFTs which offer additional features**

Some NFTs have been structured to include additional features like providing exclusive access and/or rights to watch a specific TV show or to a private performance by an artiste or to be granted admission to an exclusive community. For example, the show "Stoner Cats" which includes celebrities such as Mila Kunis, Ashton Kutcher, Chris Rock and even Vitalik Buterin (a co-founder of Ethereum), uses NFTs as a "ticket" to grant purchasers of their NFTs access to watch "Stoner Cats".

Other NFTs such as Gary Vaynerchuk's VeeFriends allow purchasers of his NFTs to be granted admission to VeeCon, a conference run by Gary Vaynerchuk addressing areas such as business and entrepreneurship.

In some games including Axie Infinity, a play-to-earn platform in which players use NFT digital characters called Axies to earn native tokens that can be traded into a cryptocurrency with a corresponding and often appreciating fiat value, the concept that "in-game" tokens are used purely as an "in-game" asset may not be as clear cut as it once was. It is not un-imaginable that in the (not so distant) future, Axie Infinity may be played in the "Metaverse" (a concept which we will explore in a forthcoming article), and that in such context, Axie infinity's NFTs may even be openly traded on the Metaverse's inter-operable "worlds", which will allow NFTs that had been initially made to be used only in the specific "in-game" world of Axie Infinity to be traded and exchanged with other digital tokens and/or NFTs in the Metaverse. Such scenarios raise the question of whether such NFTs would be considered legally as a payment token which may be used to purchase or obtain goods and/or services and/or discharge debts which in turn may raise potential issues of whether such NFTs would come to be regulated under the PS Act, or if the Metaverse be considered simply another "game" in which such NFTs may be used by users to gain access to play and earn "in-game" tokens?

With the rapid evolution and popular appeal of NFTs in particular and digital tokens generally, regulatory authorities in countries around the world have had to play catch-up with each evolving trend and type of NFTs and digital tokens being brought to market and it may be a probability (if not likelihood) that when a law is promulgated and/or a regulation is introduced with the objective of introducing checks and balances on a certain type of NFT and/or digital token, it will become redundant as the next NFTs and digital tokens may have already evolved into something distinctively different.

We are excited about what the future has in store for digital tokens and NFTs and look forward to seeing the role of the Metaverse in fast forwarding this digital (r)evolution.

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