THE STATE OF GLOBAL CRYPTOCURRENCY REGULATION: SOUTHEAST ASIA

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Following or in spite of the general downward plunge in cryptocurrency value from the first quarter of 2018, termed by some as the "Great Crypto Crash", many governments and regulators in various countries around the world have published guidelines or established their respective regulatory frameworks for cryptocurrencies and initial coin offerings ("**ICOs**").

Regulators in Southeast Asian countries have taken a keen interest in the regulation of the cryptocurrency industry, with regulators in Singapore, Indonesia, Malaysia, the Philippines and Thailand having issued guidelines and new regulations in recent months.

In our earlier article published on 1 December 2017, we discussed the governmental and regulatory approach to cryptocurrency; and in particular to ICOs in nine countries. In this series of articles, we will re-visit each of these countries and update you on the state of cryptocurrency regulation there. As there have been considerable developments since our earlier article, we will have three articles in this update series, each focusing on different countries, including additional countries not covered in our earlier article but which we believe merit inclusion now because of new developments in those countries in this area.

In this article, we look at the regulatory approach taken in the five Southeast Asian countries mentioned.

SINGAPORE

In Singapore, the Monetary Authority of Singapore ("**MAS**") issued an updated Guide to Digital Token Offerings on 30 November 2018 (the "**MAS Guide**").

In the MAS Guide, MAS highlighted that any offer of digital tokens that constitute capital market products, such as digital tokens representing equity in a corporation or a debenture of the issuer, or that constitute a unit in a collective investment scheme ("**CIS**"), will need to comply with the requirements under the Securities and Futures Act (Cap. 289) ("**SFA**"), including the filing of a prospectus, unless it falls within the exemptions under the SFA. MAS also clarified that the ability for a digital token to be traded on the secondary market alone does not result in a digital token being construed as a capital markets product under the SFA.

Operators of digital token trading platforms in Singapore which constitute securities or futures contracts must be approved by MAS as an approved exchange or recognised by MAS as a recognised market operator ("**RMO**") under the SFA unless otherwise exempted. On this point, MAS released a consultation paper on 22 May 2018 proposing a three-tier regulatory framework for RMOs with varying requirements on information disclosure, base capital requirements, and retail investor protection, to improve market operators' business flexibility when establishing new centralized trading facilities and speed to market when launching new products.

Firms looking to utilise innovative technology to provide financial services that are regulated by MAS may apply for admission to the regulatory sandbox. MAS also released a consultation paper on 20 November 2018 proposing improvements to the management and processing of sandbox applications through a new "sandbox express" regime, with the objective of providing enterprising Fintech companies with a faster option to bring innovative financial services or products to market for testing and to reduce the time and resources required of the applicants. Under the "sandbox express" regime, MAS will endeavour to complete the assessment of the application and respond to the applicant within 21 days from the date of receiving the application.
In addition, under the Payment Services Bill, which was passed by Parliament on 14 January 2019 and, whilst not operational as at 20 February 2019, is expected to come into effect later this year, providers of digital payment token dealing and digital payment token exchange services will be required to apply for a major payment institution licence or a standard payment institution licence, under which the licensees will be regulated for anti-money laundering ("**AML**") and counter financing of terrorism ("**CFT**") purposes and will be required to put in place policies, procedures and controls to address money laundering and terrorism financing risks.

MAS expressly advised that digital token issuers and their legal advisors should look beyond labels and examine the features and characteristics of each token. To this end, MAS stated that the illustrative case studies in the MAS Guide are not exhaustive and "deliberately avoid labeling using terms like "utility token" or "stablecoin". MAS has also been proactive in enforcing these laws and regulations, having issued warnings to eight (8) digital token exchanges and two (2) ICO issuers in Singapore not to offer or facilitate trading in digital tokens that are securities or futures contracts without MAS' authorisation, including a warning on 24 January 2019 to a digital token issuer not to proceed with its securities token offering in Singapore as it failed to comply with the advertising restriction when its legal advisors put out a post on LinkedIn calling attention to the offer, which was made accessible to the public.

INDONESIA

On 8 February 2019, Indonesia's Commodity Futures Trading Regulatory Agency ("**Bappebti**") issued Ministerial Regulation No. 5/2019 ("**Bappebti Regulations**"). Under the Bappebti Regulations, cryptocurrencies are regarded as trading commodities which may be legally traded on futures exchanges, provided that cryptocurrency traders in Indonesia comply with consumer protection, AML, and CFT risk assessment requirements and keep the transaction data of cryptocurrencies traded on their platforms for at least five years and have a local server in Indonesia.
Physical traders of crypto assets who have carried out crypto asset trading business prior to the Bappebti Regulations coming into force and prospective physical traders of crypto assets are required to register with Bappebti and have at least Rp 100 billion in paid-up capital, of which Rp 80 billion must be maintained in their accounts. To get approval to facilitate crypto-asset transactions between customers, a physical trader of crypto assets is required to have at least Rp 1 trillion in paid-up capital, of which at least Rp 80 billion must be maintained in their accounts.
In spite of the Bappebti Regulations, both Bank Indonesia (the central bank of Indonesia) and the Indonesian government have since stressed that commodities are not an area of Bank Indonesia's concern and that bitcoin or cryptocurrencies remain banned as payment instruments or currency in Indonesia, and this is the current position pursuant to Bank Indonesia's statement of 2 February 2014 and re-affirmed in Bank Indonesia's press release of 13 January 2018.

All payment system operators and financial technology operators in Indonesia, both bank and non-bank institutions, are prohibited from processing transactions using virtual currency, as per Bank Indonesia's Regulation No. 18/40/PBI/2016 (effective as of 9 November 2016) and Regulation No. 19/12/PBI/2017 (effective as of 30 November 2017) respectively.

MALAYSIA

In Malaysia, issuances of digital assets via ICOs and the trading of digital assets at digital asset exchanges in Malaysia must comply with laws administered by both the Securities Commission Malaysia ("**SC Malaysia**") and Bank Negara Malaysia ("**BNM**").

All digital currencies and digital tokens are prescribed as securities under securities laws pursuant to the recent Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (the "**CMSA Order 2019**"), which came into operation on 15 January 2019.

The implication of the CMSA Order 2019 is that an offer of digital currencies or digital tokens will constitute a "regulated activity" under Schedule 2 of the Capital Markets and Services Act, and the issuer of such digital currencies or digital tokens would be required to obtain a Capital Markets Services Licence from SC Malaysia, failing which the issuer would be liable to pay a fine of up to RM 10 million and/or face up to 10 years in prison.

Following the CMSA Order 2019, SC Malaysia issued its revised Guidelines on Recognized Markets on 31 January 2019, under which any person who is interested in operating a digital asset platform is required to apply to SC Malaysia to be a recognized market operator. Under the CMSA Order 2019, digital currencies and digital tokens that are offered or traded on or through a recognized market do not constitute shares, debentures or a unit in a unit trust scheme or prescribed investment schemes under the securities laws of Malaysia.

Existing digital asset platform operators are required to submit an application to SC Malaysia by 1 March 2019, and pursuant to SC Malaysia's media statement of 17 January 2019, during such transitional period until 1 March 2019, these existing platform operators which are listed on SC Malaysia's website will not be permitted to accept new investors and will only be allowed to facilitate the withdrawal or transfer of client assets with the written instruction of the investor.

ICO issuers and digital asset exchanges are subject to various obligations which include having in place adequate AML and CFT monitoring processes in accordance with SC Malaysia's Guidelines on Prevention of Money Laundering and Terrorism Financing, and any persons carrying on activities involving digital currencies are required to comply with BNM's Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6) issued on 27 February 2018.

SC Malaysia also mentioned in its media statement of 17 January 2019 that they will be issuing guidelines for ICOs by the end of Q1 2019, and that in the meantime, ongoing ICOs should cease all activities and return all monies or digital assets collected from investors. ICO operators are also prohibited from undertaking regulated activities such as deposit-taking

and banking business, foreign exchange administration activities and remittances, without the necessary authorisation under financial services laws administered by BNM.

SC Malaysia has been vigilant in their monitoring of ICOs for compliance with the relevant laws and regulations. It has issued directives to ICO issuers, such as CopyCash Foundation, to immediately cease and desist its proposed ICO and activities incidental to the ICO, including any roadshows, seminars or promotional events.

In view of these latest regulatory developments, SC Malaysia and BNM have jointly stated that they will enter into coordination arrangements to ensure compliance with laws and regulations under the purview of both regulators.

THE PHILIPPINES

In the Philippines, the Bangko Sentral ng Pilipinas ("**BSP**") (i.e. the central bank of the Philippines) issued Circular No. 944 of 2017 (the "**BSP Circular**") on 6 February 2017, which provides guidelines for virtual currency exchanges. Under the BSP Circular, the BSP stated that it aims to regulate virtual currencies that are used for delivery of financial services (e.g. for payments and remittances), which have material impact on AML, CFT, consumer protection, and financial stability. Virtual currency exchanges are required to obtain a Certificate of Registration to operate as remittance and transfer companies and are required to register with the Anti-Money Laundering Council Secretariat. Exchanges are also subject to BSP's risk management requirements and notification and reporting requirements.

Pursuant to the advisory issued by the Securities and Exchange Commission Philippines ("**SEC Philippines**") on 8 January 2018, offerors of virtual currencies which constitute securities under Section 3.1 of the Securities Regulation Code ("**SRC**") have to register such offers with SEC Philippines and obtain the appropriate licenses and/or permits to sell securities to the public under the SRC. In addition, SEC Philippines also issued an advisory on 10 April 2018 stating that offers of cloud mining contracts which allow investors to fund the purchase of equipment for mining cryptocurrencies in order to obtain the cryptocurrency proceeds from such mining constitute investment contracts which fall within the definition of "securities" under the SRC and such offers will similarly need to be registered with SEC Philippines.

SEC Philippines has since released proposed rules to govern the registration of ICOs for public consultation on 2 August 2018 and 27 December 2018. The proposed rules include a two-pronged assessment of ICOs namely (i) an initial assessment where the token issuer has the burden to prove that the tokens are not security tokens; and (ii) registration of the tokens if the tokens constitute security tokens. Such issuer of security tokens will be required to incorporate or maintain a branch office in the Philippines, to amend any

whitepaper in conformity with documents submitted to SEC Philippines, to submit a code audit report issued by an independent code auditor on the source code, AML framework, technology risks and security protocols, and to keep proceeds from the ICO under escrow.

With regard to monitoring of ICOs, SEC Philippines has issued a number of advisories on ICOs or companies soliciting investments from the public which do not comply with the SRC.
The Philippines has also been actively promoting the development of the cryptocurrency industry through the Cagayan Economic Zone Authority ("**CEZA**"), a government-owned and controlled corporation which has invested resources to build the "Crypto Valley of Asia" within the Cagayan Special Economic Zone and Free Port ("**CSEZFP**"). CEZA issued the Cagayan Special Economic Zone and Freeport Financial Technology Solutions and Offshore Virtual Currency Business Rules and Regulations of 2018 ("**CEZA FTSOVCBRR**") on 16 March 2018, which regulates and controls Financial Technology Solutions and Offshore Virtual Currency ("**FTSOVC**") businesses, and more recently, issued the Rules on Digital Asset and Token Offerings (Supplemental Rule to the Financial Technology Solutions and Offshore Virtual Currency Business Rules and Regulations of CEZA of 2018) ("**DATO Rules**") on 12 December 2018 which supplements the CEZA FTSOVCBRR.

Pursuant to the DATO Rules, CEZA, in its capacity as the principal regulatory authority in respect of the enforcement and implementation of the DATO Rules, has created and registered the Asia Blockchain and Crypto Association ("**ABACA**") as a Self-Regulatory Organization to implement and enforce the DATO Rules, which cover the acquisition of crypto assets, including utility and security tokens.

Under the DATO Rules, all issuers of digital assets (i.e. any or a combination of a virtual currency, an asset token and/or a utility token) which are formed or hold a FTSOVC licence under the CEZA FTSOVCBRR to do business within the CSEZFP, are required to register their digital asset and token offerings ("**DATOs**") with ABACA to be classified under one of the three (3) tiers of DATO based on the amount they seek to raise, to list their tokens on licensed Offshore Virtual Currency Exchanges ("**OVCEs**"), and to ensure that they comply with the laws and regulations applicable to the offer of digital assets to persons in any jurisdiction where they consider to offer digital assets under the laws and regulations of such jurisdictions. DATOs may, depending on the tier they are classified, be required to enter into agreements with ABACA-accredited wallet providers or custodians.

It should be noted that these digital assets must not be sold or offered for sale or distribution within the Philippines (which would be subject to BSP and SEC Philippines regulation as mentioned above).

THAILAND

Thailand is the first country in Southeast Asia to enact legislation regulating the offering of digital assets and businesses undertaking digital-asset-related activities, being the Emergency Decree on the Digital Asset Businesses B.E. 2561 (C.E. 2018) (the "**Digital Asset Businesses Decree**") and the Emergency Decree on the Amendment of the Revenue Code (No. 19) B.E. 2561 (C.E. 2018), which came into force on 14 May 2018.

Under the Digital Asset Businesses Decree, the Thailand Securities and Exchange Commission ("**SEC Thailand**") regulates the public offering of newly issued or existing newly issued digital tokens, which include cryptocurrencies and digital tokens but exclude securities pursuant to Thailand's securities laws. Issuers of digital tokens are required to obtain approval from SEC Thailand and file a registration statement and draft prospectus with SEC Thailand. Issuers are also subject to ongoing duties to disclose information to investors and the public after its ICO and submit reports to SEC Thailand on their financial condition, business operations and any information which may affect the rights and interests of digital token holders or the decision-making on investment or the change in the price or value of the digital token.

Furthermore, operators of digital asset businesses, which include digital asset exchanges, digital asset brokers, digital asset dealers and other businesses relating to digital assets as prescribed by the Ministry of Finance ("**MOF Thailand**") under the recommendation of SEC Thailand, are required to obtain a licence from MOF Thailand upon the recommendation of SEC Thailand. Licensees are required to comply with rules, procedures, and conditions specified by SEC Thailand, including implementing security measures against electronic crime and know-your-client measures, client due to diligence processes and AML and CFT measures, and segregating clients' assets from their own.

SEC Thailand has since issued regulations number 15/2561 and 16/2561 on 3 July 2018 regarding the public offering of digital tokens and the rules, conditions, and procedures for approval of digital asset businesses respectively. SEC Thailand has also since issued a press release stating that it has relaxed the criteria for offering of digital tokens in pre-ICO and private sale.

As of 20 February 2019, SEC Thailand has issued 3 digital asset exchange licenses, 1 digital asset broker license, and 1 digital asset dealer license. SEC Thailand has also issued several warnings to the public to use caution when investing in digital assets or ICOs who have not been approved and licensed by the SEC.

The Bank of Thailand ("**BOT**"), Thailand's central bank, issued a circular on 1 August 2018 where financial institutions such as banks can issue digital tokens, provide crypto brokerage services, run crypto-related businesses and invest in cryptocurrencies through subsidiaries,

although financial institutions are still banned from direct dealing with cryptocurrencies.

CONCLUSION

Recent developments in cryptocurrency regulations and legislation in Southeast Asia signal a shift in focus towards placing the onus on the token issuers, token exchanges and other cryptocurrency-related businesses to satisfy the applicable guidelines, regulations or legislation and to ensure that they implement adequate security protocols to safeguard their clients' digital assets, comply with AML and CFT obligations through implementing the necessary know-your-client processes, and ensure greater transparency of these businesses through regular reporting and disclosure requirements. This approach and such developments bode well for the continued development of cryptocurrencies and ICOs as a legitimate and safe payment and funding option for the near future.