

Digital Assets and Digital Asset Custodians in Malaysia

Digital Assets and Digital Asset Custodians in Malaysia

Traditional financial services have experienced much disruption from digital assets and it is clear that a key component of the future growth of the financial services sector will lie with digital assets. The International Monetary Fund (IMF) defines digital assets as *“digital representations of value, made possible by advances in cryptography and distributed ledger technology. They are denominated in their own units of account and can be transferred from peer-to-peer without an intermediary.”* In simple terms, digital assets are assets that exist virtually, making them intangible but many are increasingly being linked to real world assets.

Digital assets are recognised as securities under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 ("**Prescription Order 2019**"), for the purposes of securities laws in Malaysia if the criteria set out in the Prescription Order 2019 are satisfied. Digital assets come in many forms, but under the Prescription Order 2019, digital assets are categorised into two types which are **digital currency** and **digital token**.

The term **digital currency** is defined under the Prescription Order 2019 as a *“digital representation of value which is recorded on a distributed digital ledger, whether cryptographically-secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including through the crediting or debiting of an account money.”* Meanwhile, the term **digital token** is defined as *“a digital representation which is recorded on a distributed digital ledger, whether cryptographically-secured or otherwise.”* Accordingly, any digital assets which are not recorded on a distributed digital ledger do not fall under the purview of the Prescription Order 2019. It is also worth noting that, as the law currently stands, privately-issued digital assets are not recognised as a legal tender or as a form of payment instrument in Malaysia.

If you have any related questions/queries please do not hesitate to contact us:

E: general@shinassociates.com.my | T: +603 2201 5584

Shin Associates is a Malaysian-based law firm that is passionately driven to provide comprehensive legal advisory services of integrity and commercial edge, across national boundaries and on international platforms.

This material has been prepared for general informational purposes only and is not intended to be relied upon as legal or other professional advice.

Under the Prescription Order 2019, a digital currency is deemed to be a security for the purposes of securities laws if:

- (a) it is traded in a place or on a facility where offers to sell, purchase, or exchange of, the digital currency are regularly made or accepted;
- (b) a person expects a return in any form from the trading, conversion or redemption of the digital currency or the appreciation in the value of the digital currency; and
- (c) it is not issued or guaranteed by any government body or central banks as may be specified by the Malaysian Securities Commission (“SC”), is prescribed as securities for the purposes of the securities laws.

Meanwhile, a digital token is deemed to be a security for the purposes of Malaysian securities laws if:

- (a) the person receives the digital token in exchange for a consideration;
- (b) the consideration or contribution from the person, and the income or returns, are pooled;
- (c) the income or returns of the arrangement are generated from the acquisition, holding, management or disposal of any property or assets or business activities;
- (d) the person expects a return in any form from the trading, conversion or redemption of the digital token or the appreciation in the value of the digital token;
- (e) the person does not have day-to-day control over the management of the property, assets, or business of the arrangement; and

If you have any related questions/queries please do not hesitate to contact us:

E: general@shinassociates.com.my | T: +603 2201 5584

Shin Associates is a Malaysian-based law firm that is passionately driven to provide comprehensive legal advisory services of integrity and commercial edge, across national boundaries and on international platforms.

This material has been prepared for general informational purposes only and is not intended to be relied upon as legal or other professional advice.

- (f) the digital token is not issued or guaranteed by any government body or central banks as may be specified by the SC.

As financial market participants and regulators of financial services navigate and contemplate their respective road maps for adoption of digital assets, in this regard, one can only anticipate the rise of a new breed of service providers who would be able to assist with the management of digital assets.

While there are no laws which specifically address 'digital asset management' under applicable legislation in Malaysia, the SC regulates 'digital asset custodians' pursuant to the Capital Markets and Services Act 2007 ("**CMSA**"), which perform similar functions as digital asset managers.

Under the SC's **Guidelines on Digital Assets ("DA Guidelines")**, a DAC is defined as a "*person who provides the **services of providing safekeeping, storing, holding or maintaining custody of digital assets for the account of another person.***"

Such activities are considered as capital market services under Section 76A of the CMSA, and accordingly are subject to the regulatory purview of the SC. The SC may, upon satisfaction of various rigorous and stringent criteria, register a person as a DAC.

The digital assets industry is borderless and as long as the digital ecosystem continues to exhibit phenomenal growth, factors such as security, regulatory compliance and the general viability of the digital custodian will continue to be a relevant consideration for participants in the digital ecosystem.

If you have any related questions/queries please do not hesitate to contact us:

E: general@shinassociates.com.my | T: +603 2201 5584

Shin Associates is a Malaysian-based law firm that is passionately driven to provide comprehensive legal advisory services of integrity and commercial edge, across national boundaries and on international platforms.

This material has been prepared for general informational purposes only and is not intended be relied upon as legal or other professional advice.