

Cryptoassets & Blockchain

in Singapore

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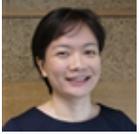
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GENERAL LEGAL AND REGULATORY FRAMEWORK

Legal framework

What legal framework governs cryptoassets? Is there specific legislation governing cryptoassets and businesses transacting with cryptoassets?

In general, persons dealing in cryptoassets should be mindful of the implications of:

- the Commodity Trading Act (CTA);
- the Securities and Futures Act (SFA); and
- the Payment Services Act (PSA), which is likely to take effect in January 2020.

Among other classifications, a cryptoasset may be:

- a commodity under the CTA;
- a capital markets product under the SFA; or
- a digital payment token (DPT) under the PSA.

A cryptoasset, which is a digital representation of value that is expressed as a unit, not denominated in or pegged to any currency and intended to be a medium of exchange, is likely to fall within the definition of a DPT. Examples of this include Bitcoin and Ethereum. Any business that deals in DPTs or offers any service facilitating the exchange of DPTs is considered to perform a digital payment token service, which is a regulated activity under the PSA regime.

Other cryptoassets such as digitised security tokens or digital asset tokens that give the holder rights akin to those of shareholders or debenture holders or other economic rights, or which derive their value from underlying things like commodities, financial instruments and indices, may be considered securities or derivatives contracts under the SFA. Persons dealing in or providing corporate finance advice on such cryptoassets must hold a capital markets services licence (CMSL) for the regulated activities of dealing in capital market products and advising on corporate finance, respectively. Issuers of such cryptoassets must be mindful of the prospectus requirements for the offer of securities under the SFA.

Businesses that transact in cryptoassets which are digital asset tokens backed by commodities (eg, gold may fall under the CTA regime and, depending on the activities involved, may be required to be licensed under the CTA.

Government policy

How would you describe the government's general approach to the regulation of cryptoassets in your jurisdiction?

The financial sector is an integral part of Singapore's Smart Nation vision. In implementing the Smart Nation vision, the transformation of the financial sector has focused on fintech and innovation. With regard to cryptoassets, the Monetary Authority of Singapore (MAS) has been closely monitoring the developments and the potential risks that cryptocurrencies pose. The MAS recognises that the underlying distributed ledger technology holds much promise for application in areas such as cross-border payments and trade finance, but also acknowledges that the anonymous nature of certain cryptoassets facilitate illicit transactions and that the hype around tokens has sparked speculation and increased the risk of fraud. The MAS adopts a balanced approach by being open to innovation and helping the industry to harness the potential benefits of blockchain technology and cryptoassets, while focusing on activities associated with cryptoassets, evaluating the risks and considering appropriate regulatory responses to manage them.

Regulatory authorities

Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

The MAS governs both the SFA and PSA regime, while Enterprise Singapore oversees the CTA regime.

Regulatory penalties

What penalties can regulators impose for violations relating to cryptoassets?

Under the PSA an offender may face an injunction, an order for specific performance (Section 99(2)(b)), a fine, a prison term or both. Fines range from S\$2,000 to S\$250,000 with additional fines of up to S\$25,000 per day for particular continuing offences, while prison terms range from three months to three years.

Under the SFA, an offender may face an injunction, a fine, a prison term or both. Fines range from S\$2,000 to S\$250,000 with additional fines of up to S\$25,000 per day for particular continuing offences, while prison terms range from three months to seven years.

Under the CTA, an offender may face a fine of between S\$5,000 and S\$500,000, a prison term of 12 months to seven years or both.

Court jurisdiction

Which courts have jurisdiction over disputes involving cryptoassets?

In the absence of any contractual clauses specifying the jurisdiction for dispute resolution, the Singapore courts have jurisdiction. The District Court has jurisdiction over claims below S\$250,000, while the High Court has jurisdiction over claims above S\$250,000.

Legal status of cryptocurrency

Is it legal to own or possess cryptocurrency, use cryptocurrency in commercial transactions and exchange cryptocurrency for local fiat currency in your jurisdiction?

There are currently no laws prohibiting the ownership of cryptocurrencies, their use in commercial transactions or the exchange of cryptocurrencies for local fiat currency.

However, once the PSA takes effect in January 2020, the buying and selling of cryptocurrencies for fiat currency and the facilitating of exchanges of cryptocurrencies for fiat currency may constitute digital payment token service, which will be a regulated activity.

Fiat currencies

What fiat currencies are commonly used in your jurisdiction?

Pursuant to Section 11 of the Currency Act, the official currency of Singapore is the Singapore dollar. The Singapore

dollar is the most commonly used currency in Singapore.

Industry associations

What are the leading industry associations addressing legal and policy issues relating to cryptoassets?

The following industry associations address these issues:

- ACCESS;
- the Blockchain and Crypto Association of Singapore; and
- the Singapore Fintech Association.

CRYPTOASSETS FOR INVESTMENT AND FINANCING

Regulatory threshold

What attributes do the regulators consider in determining whether a cryptoasset is subject to regulation under the laws in your jurisdiction?

Regulators consider whether a cryptoasset contains attributes of, among others :

- a commodity under the Commodity Trading Act (CTA);
- a capital markets product under the Securities and Futures Act (SFA); or
- a digital payment token (DPT) under the Payment Services Act (PSA).

Depending on the exact nature and attributes of certain cryptocurrencies, regulatory considerations on deposit taking and money lending may also be relevant.

If a cryptoasset is subject to a commodity forward contract, leveraged commodity trading, contract made pursuant to trading in differences or spot commodity trading or is an index, a right or an interest in a commodity, then the issuer and broker may be subject to licensing requirements under the CTA.

Under the SFA, a cryptoasset may be:

- a share, if it confers or represents ownership interest in a company;
- a debenture, if it evidences the issuer's indebtedness in respect of any money that is or may be lent to the issuer by the token holder;
- a unit in a business trust, if it confers or represents ownership interest in the trust property of a business trust;
- a securities-based derivatives contract, if it is a form of derivatives contract of which the underlying thing is a share or debenture of unit in a business trust; and
- a unit in a collective investment scheme.

The offer of such cryptoassets is subject to the regulatory regime under Part XIII of the SFA relating to the offers of investments, and containing, among other things, the prospectus and prospectus exempt requirements.

A cryptoasset is a DPT under the PSA if it:

- is expressed as a unit;
- is not denominated in or pegged to any currency;
- is intended to be a medium of exchange accepted by the public; and

- can be transferred or stored electronically.

Service providers which deal in or facilitate the exchange of DPTs, unless otherwise exempted or excluded, must hold a standard payment institution licence or a major payment institution licence, depending on whether the monthly average value of transactions accepted, processed or executed over a calendar year exceeds S\$3 million or its equivalent in foreign currency.

Investor classification

How are investors in cryptoassets classified and treated differently?

Certain requirements under the SFA and the CTA do not apply to accredited investors. There is also different regulatory treatment of expert investors and institutional investors under the SFA.

Under the PSA regime, there is no classification of investors.

The SFA regime identifies different classes of investors, namely retail customers, expert investors, accredited investors and institutional investors:

'Retail customers' are customers who are not accredited investors, expert investors or institutional investors.

'Expert investors' are persons whose business involves the acquisition, disposal or holding of capital markets products as principal or agent, or a trustee of such trust that the Monetary Authority of Singapore (MAS) may prescribe.

An 'accredited investor' under the SFA and CTA is generally:

- an individual who:
 - has net personal assets exceeding S\$2,000,000 in value (where the value of the individual's primary residence is either S\$1,000,000 or the fair market value of the residence less any credit facility secured by the individual's primary residence, whichever is lower); or
 - whose income in the preceding 12 months is not less than S\$300,000; or
- a corporation with net assets exceeding S\$10,000,000.

The SFA contains a further segment of accredited investor as a party which has net financial assets exceeding S\$1,000,000 in value (which includes deposits in banks, investment products such as capital markets products, spot foreign exchange contracts other than for the purposes of leveraged foreign exchange trading and any life policy).

Institutional investors include investors that are controlled or owned by the government or financial regulated institutions.

In general, retail customers are afforded the most protection and businesses must satisfy the most regulatory requirements (when compared to regulatory requirements for other categories of customers) in order to be able to offer any products or services to customers. Business must fulfil fewer regulatory requirements to offer services or products to expert investors, accredited investors and institutional investors (eg, prospectus exemption provisions that apply to accredited and institutional investors).

Initial coin offerings

What rules and restrictions govern the conduct of, and investment in, initial coin offerings (ICOs)?

In general, offers of utility tokens are unregulated.

As for companies listed on the Singapore Exchange (SGX), the SGX has laid out the following guidelines for companies considering conducting ICOs:

- Listed issuers who intend to conduct digital token sales must first consult with the SGX Regulation (SGX RegCo) and make all relevant disclosures thereto. Issuers will also need to provide legal opinion(s) on the nature of the digital tokens and an auditor opinion on the ICO's accounting treatment.
- The issuer must disclose details of the following information to its shareholders:
 - rationale for the ICO;
 - risks (operational and cybersecurity) arising from the ICO;
 - use of funds raised;
 - accounting and valuation treatments for the ICO;
 - know-your-customer checks to address money laundering and terrorist financing risks;
 - the accounting and valuation treatment for ICOs;
 - the use of existing issuer funds to conduct an ICO;
 - the financial impact on the issuer as a result of the token issuance; and
 - any impact on existing shareholders' rights.
- After an ICO has been conducted, listed issuers are still expected to keep their shareholders informed of material information, the development of the ICO and digital tokens on a timely basis, as well as the use of ICO proceeds. Further, these companies must also agree with their statutory auditors on the scope of an audit which should provide assurance that the ICO has been properly accounted for in their financial statements, and that associated risks have been adequately addressed and milestones on utilisation of funds raised have been adhered to.

Security token offerings

What rules and restrictions govern the conduct of, and investment in, security token offerings (STOs)?

'Securities' has a broad meaning under the SFA, and comprises shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership; it excludes units of a collective investment scheme.

Where tokens are considered to be securities, securities-based derivatives contracts or units in a collective investment scheme, the issue of such tokens is subject to the prospectus requirements under Part XIII of the SFA, unless otherwise exempted. Prospectus disclosures must comply with the relevant schedules of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations. Where tokens are considered to be units or derivatives of units in a business trust, no offer of such tokens may be made unless the business trust is a registered or recognised business trust

Depending on the issuer's business activities and whether the token amounts to a capital markets product, the issuer may require a capital markets services licence (CMSL) for dealing in capital market products that are securities under the SFA, unless otherwise exempted.

Holders of a CMSL that carry on the business of dealing in tokens that are capital markets products must comply with anti-money laundering and counter-terrorism financing requirements under Monetary Authority of Singapore (MAS) Notice SFA04-N02.

Intermediaries which facilitate offers or the issuance of such security tokens (including operators of platforms on which the security tokens are offered, issued or traded and those providing financial advice in respect of such tokens) may also be subject to licensing and other regulatory requirements under the SFA or the Financial Advisors Act (Cap 110).

Stablecoins

What rules and restrictions govern the issue of, and investment in, stablecoins?

If stablecoins are considered to be securities, securities-based derivatives contracts or units in a collective investment scheme, they are regulated under the SFA.

Where a stablecoin is regulated under the SFA, the rules and regulations stated above will apply.

For example, where an issuer of a stablecoin pegged to a currency must buy back tokens from holders, such stablecoin may constitute a debenture if the token represents the issuer's indebtedness to the holder to pay back the holder the monetary value per token.

Further, the issuing of cryptocurrencies as a digital payment token service or an e-money issuance service will be regulated once the PSA comes into force. Stablecoins with values pegged to any fiat currency may fall within the definition of 'e-money' under the PSA, and those whose values are not pegged to any fiat currency may fall within the definition of a 'digital payment token'.

Service providers which deal in or facilitate the exchange of DPTs are, unless otherwise exempted or excluded, required to hold a standard payment institution licence or a major payment institution licence, depending on whether the monthly average value of transactions accepted, processed or executed over a calendar year exceeds S\$3 million or its equivalent in foreign currency.

The provider of an e-money issuance service will have to hold a major payment institution licence if the average daily float over a calendar year exceeds S\$5 million or its equivalent in foreign currency.

Depending on the exact nature and attributes of a stablecoin, regulatory requirements on money lending and deposit taking should also be considered.

Airdrops

Are cryptoassets distributed by airdrop treated differently than other types of offering mechanisms?

No, cryptoassets distributed by airdrop are not treated differently from other types of offering mechanisms. The applicable regulatory regime depends on the nature and attributes of the cryptoasset.

If a cryptoasset falls within the SFA regime and depending on how the airdrop is done, the restrictions on and the market misconduct provisions under the SFA, the restrictions on solicitation under the PSA and the market misconduct provisions under the CTA should be considered.

Advertising and marketing

What laws and regulations govern the advertising and marketing of cryptoassets used for investment and financing?

The regulation of the advertising or marketing of a cryptoasset depends on whether the cryptoasset falls under any of the relevant laws.

Under the SFA, if the cryptoassets amount to securities, securities-based derivatives contracts or units in a collective investment scheme requiring a prospectus for the offer or intended offer, there can be no advertisement of the offer or publication that is likely to induce people to subscribe to the cryptoassets, unless the prospectus or prospectus exempt

requirements are satisfied.

Further, if the cryptoassets amount to capital markets products under the SFA, holders of a CMSL and their representatives should be mindful as to whether the advertising or marketing of a cryptoasset amount to a 'product advertisement' under the Securities and Futures (Licensing and Conduct of Business) Regulations. Such marketing under the regulations must be done in compliance with Section 46(2) of the regulations, including the requirements that the advertisement not be false or misleading and that it provides a fair and balanced view of the cryptoasset to which it relates.

If a cryptoasset falls under the upcoming PSA regime, a business that wishes to advertise or market to the Singapore public in relation to the cryptoasset must be licensed under the PSA before doing so. If such a business is not licensed under or is exempt from the PSA regime, the business cannot carry out such activity.

Trading restrictions

Are investors in an ICO/STO/stablecoin subject to any restrictions on their trading after the initial offering?

In general, investors in ICOs and stablecoins which do not amount to securities, securities-based derivatives contracts or units in a collective investment scheme are not subject to regulations imposing trading restrictions.

For offers of investments under the SFA resulting in the listing of STOs on the SGX, the SGX listing rules prescribe certain moratorium requirements for:

- controlling shareholders and their associates;
- executive directors with an interest in 5% or more of the issued share capital; and
- pre-listing investors which hold 5% or more of the issuer's post-invitation issued share capital.

Crowdfunding

How are crowdfunding and cryptoasset offerings treated differently under the law?

Offers of utility tokens are unregulated. Crowdfunding and cryptoasset offerings that amount to offers of securities, securities-based derivatives contracts or units in a collective investment scheme, are subject to the prospectus requirements under the SFA, unless otherwise exempted.

Transfer agents and share registrars

What laws and regulations govern cryptoasset transfer agents and share registrars?

General company law and business conduct rules apply to share registrars.

Depending on the business activity of the transfer agent, if the cryptoasset amounts to a form of securities, a securities-based derivatives contract that is not a futures contract or a unit in a collective investment scheme, the transfer agent may be required to hold a CMSL for providing custodial services.

Holders of CMSLs are required to comply with:

- the SFA;
- applicable subsidiary legislation relating to business conduct rules;
- financial and margin requirements;

- MAS notices on anti-money laundering and counter-terrorism financing (AML/CFT) requirements; and
- risk-based capital adequacy requirements.

Anti-money laundering and know-your-customer compliance

What anti-money laundering (AML) and know-your-customer (KYC) requirements and guidelines apply to the offering of cryptoassets?

Financial institutions regulated by the MAS must observe the MAS AML/CFT requirements, regardless of whether transactions are conducted in fiat or cryptocurrencies. Such financial institutions must put in place robust controls to detect and deter the flow of illicit funds through Singapore's financial system.

In general, the AML/CFT requirements concern:

- risk identification, assessment and mitigation;
- customer due diligence (including KYC for beneficial owners);
- reliance on third parties;
- correspondent accounts;
- record keeping;
- internal policies, procedures and controls; and
- compliance, account review, audit and training.

All persons must also abide by the following:

- obligations to report suspicious transactions to the Suspicious Transactions Reporting Office, part of the Commercial Affairs Department of the Singapore Police Force pursuant to Section 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A) (CDSA); and
- prohibitions on dealing with or providing financial services to designated individuals and entities pursuant to the Terrorism (Suppression of Financing) Act (Cap 325) (TSOFA) and various regulations giving effect to United Nations Security Council Resolutions.

Sanctions and Financial Action Task Force compliance

What laws and regulations apply in the context of cryptoassets to enforce government sanctions, anti-terrorism financing principles, and Financial Action Task Force (FATF) standards?

Singapore is a member of the FATF and takes reference from the norms set by the FATF. With regard to cryptoassets, the MAS takes guidance from, among others, FATF's June 2019 Guidance for a Risk-Based Approach for Virtual Assets and Virtual Asset Service Providers.

Broadly speaking, the CDSA and the TSOFA apply. The Serious Crimes and Counter Terrorism (Miscellaneous Amendments) Act, which took effect on 1 April 2019, amended the CDSA and the TSOFA to further strengthen Singapore's AML/CFT frameworks to tackle such offences more effectively. The amendments, which took reference from the FATF recommendations:

- strengthen the government's ability to enforce and prosecute offences;
- enhance penalties for AML/CFT offences; and
- facilitate the sharing of financial intelligence with overseas jurisdictions.

In its regulation of financial institutions in Singapore MAS also gives effect to targeted financial sanctions under the United Nations Security Council Resolutions through the issue of regulations prohibiting financial services, financial assistances and transfers of assets to designated individuals and entities.

CRYPTOASSET TRADING

Fiat currency transactions

What rules and restrictions govern the exchange of fiat currency and cryptoassets?

Fiat currency exchanges involving the business of buying or selling foreign currency notes must be licensed as a money-changing business under the Money-Changing and Remittance Businesses Act, as must businesses that accept money for the purpose of transmitting it to persons resident outside Singapore must be licensed. When the Payment Services Act (PSA) takes effect, the licensing of these two activities will fall under the PSA regime.

Any entity that provides the service of dealing in or facilitating the exchange of digital payment tokens (DPTs), and any entity that provides the service of issuing e-money to any person for the purpose of allowing them to make payment transactions, must hold a standard payment institution licence or a major payment institution licence under the PSA, depending on whether the monthly average value of transactions accepted, processed or executed over a calendar year exceeds S\$3 million or its equivalent in foreign currency.

Exchanges (whether electronic or otherwise) which facilitate offers to buy or sell cryptoassets that are considered to be derivatives contracts, securities or units in a collective investment scheme may be considered to be operating an 'organised market' under the Securities and Futures Act (SFA). Such exchanges must be conducted by an approved exchange or a recognised market operator before beginning operations.

Exchanges and secondary markets

Where are investors allowed to trade cryptoassets? How are exchanges, alternative trading systems and secondary markets for cryptoassets regulated?

There is currently no legislation prohibiting investors from trading cryptoassets. Whether cryptoasset exchanges must be regulated under the SFA to operate an organised market either as an approved exchange or recognised market operator, or as a digital payment token service under the PSA, depends on the kind of cryptoassets that are traded on these exchanges.

For the purpose of deciding whether a market operator should be approved as an approved exchange or recognised market operator, the Monetary Authority of Singapore (MAS) considers certain criteria, including:

- the likelihood that a disruption in the operations of such market operator could trigger further systemic disruptions to or affect public confidence in Singapore's capital markets or financial system; and
- the ability of the market operator to meet the obligations of an approved exchange.

Custody

How are cryptoasset custodians regulated?

Depending on the business activity of the cryptoasset custodian, and if the cryptoassets amount to securities, securities-based derivatives contracts that are not futures contracts or units in a collective investment scheme, the custodian may be required under the SFA to hold a capital markets services licence (CMSL) for providing custodial services, unless otherwise exempted.

Broker-dealers

How are cryptoasset broker-dealers regulated?

Depending on the business activity of the cryptoasset broker-dealer, and if the cryptoassets amount to securities, units in a collective investment scheme, derivatives contracts or spot foreign exchange contracts for the purpose of leveraged foreign exchange trading, the custodian may be required under the SFA to hold a CMSL for dealing in capital markets products, unless otherwise exempted.

Decentralised exchanges

What is the legal status of decentralised cryptoasset exchanges?

If the cryptoasset offered on the exchange amounts to a DPT, the entity which facilitates such exchange must obtain a licence under the PSA. Service providers which deal in or facilitate the exchange of DPTs are, unless otherwise exempted or excluded, required to hold a standard payment institution licence or a major payment institution licence, depending on whether the monthly average value of transactions accepted, processed or executed over a calendar year exceeds S\$3 million or its equivalent in foreign currency.

Depending on the structure and operations of a decentralised cryptoasset exchange, it may be considered to operate an organised market under the SFA and be required to obtain approval as an approved exchange or recognised market operator.

Peer-to-peer exchanges

What is the legal status of peer-to-peer (person-to-person) transfers of cryptoassets?

Subject to laws and regulations prohibiting crimes such as money laundering and counter-terrorism financing (AML/CFT), the transfer of cryptoassets between individuals is not regulated in Singapore.

Trading with anonymous parties

Trading with anonymous parties

The MAS has issued its guidance on AML/CFT controls in trade finance and correspondent banking to address trade-based money laundering, where proceeds of crime are moved through the use of trade transactions in an attempt to legitimise their illicit origins. Financial institutions are expected to establish robust due diligence processes to identify, among others:

- the parties and vessels involved in a transaction;

- the nature of goods traded;
- the countries of origin; and
- the trade cycle.

Under the SFA and PSA regimes, regulated entities cannot transact with customers on an anonymous basis. Further, regulated entities must collect information such as the full names and residential addresses of their customers as part of the know-your-customer procedures.

Subject to laws and regulations prohibiting crimes such as AML/CFT, the anonymous trading of cryptoassets between individuals is not regulated in Singapore.

Foreign exchanges

Are foreign cryptocurrency exchanges subject to your jurisdiction's laws and regulations governing cryptoasset exchanges?

SFA

The extraterritoriality of the SFA may apply to foreign cryptocurrency exchanges which offer cryptocurrencies that are subject to the SFA regime.

Under Section 339 of the SFA, a person who carries out an action partly inside and partly outside Singapore which, if done wholly in Singapore, would constitute an offence under the SFA may be guilty of that offence. Further, a person who carries out an action outside Singapore which would constitute an offence if carried out in Singapore may be guilty of the offence if the act has a substantial and reasonably foreseeable effect in Singapore.

In considering whether an act is substantial, the MAS will consider:

- the number of persons that were made an offer of services or invitation to engage in any conduct that involves an activity regulated under the SFA;
- whether the act has a significant or adverse impact on the soundness, stability and safety of Singapore's financial system or on public or investor confidence, or is detrimental to public interest or the protection of investors.

In considering whether an act is reasonably foreseeable, the MAS will consider whether:

- the above offer was made to persons in Singapore;
- any advertisements or published information was targeted at persons in Singapore; and
- the foreign entity accepts or appears willing to accept orders or applications from persons in Singapore.

MAS has also clarified that the good-faith sale or purchase of financial services would not typically attract the application of Section 339 of the SFA.

PSA

Foreign cryptocurrency exchanges that offer DPTs are prohibited from advertising to the Singapore public if they are not licensed under the PSA.

The draft regulations under the PSA offer an indication of what constitutes advertising to the general public. Relevant factors include:

- whether the relevant DPT is available for purchase in Singapore;
- whether the offer is denominated in Singapore dollars; and
- whether reasonable steps are taken to guard against persons in Singapore being provided digital payment token service.

Under what circumstances may a citizen of your jurisdiction lawfully exchange cryptoassets on a foreign exchange?

Subject to the laws relating to extra-territoriality of the SFA, a Singapore citizen may lawfully exchange cryptoassets on a foreign exchange.

Taxes

Do any tax liabilities arise in the exchange of cryptoassets (for both other cryptoassets and fiat currencies)?

Revenue earned in the form of cryptocurrencies from goods and services

Businesses that choose to accept cryptocurrencies as revenue or remuneration for goods and services are subject to normal income tax rules. The prevailing corporate tax rate is 17%.

Capital gains tax

Capital gains derived from long-term investment holdings are not subject to tax. Businesses that buy and sell cryptocurrencies in the ordinary course of business will be taxed on the profit derived from trading in the cryptoassets. Businesses which mine and trade cryptocurrencies in exchange for money are also subject to tax on the profits.

Goods and services tax (GST)

As of 1 January 2020, the use of DPTs to pay for goods or services will no longer give rise to a supply of those tokens and businesses need not account for GST on such use. A supply of DPTs in exchange for fiat currency or other DPTs, and the provision of any loan or credit of DPTs, will be exempt from GST. Hence, the supply of such tokens, being an exempt supply, will not contribute to a business' annual taxable turnover for the determination of its liability for GST registration. The GST treatment for cryptocurrencies that do not qualify as DPTs remain unchanged (ie, the supplies of such tokens will continue to be regarded as taxable supplies of services, unless they fall under the prescribed list of exempt financial services).

CRYPTOASSETS USED FOR PAYMENTS

Government-recognised assets

Has the government recognised any cryptoassets as a lawful form of payment or issued its own cryptoassets?

In a 2018 speech Ravi Menon, managing director of the Monetary Authority of Singapore (MAS), stated that no cryptocurrency yet qualified as money as none had sufficiently met the three functions of money:

- being a widely accepted medium of exchange in any market;
- being a good store of value (cryptocurrencies suffer price fluctuations); and
- being commonly used as a unit of account.

Nevertheless, it was acknowledged that with technology, cryptocurrencies may become money if they gain public trust and acceptance.

The Inland Revenue Authority of Singapore recognises that the payment for goods and services may be made with digital payment tokens (DPTs) that:

- are expressed as a unit;
- designed to be fungible;
- are not denominated or pegged to any currency;
- can be transferred or stored electronically; and
- are or aim to be a medium of exchange accepted by the public, without any substantial restrictions on their use as consideration.

As Singapore's central bank, the MAS has not issued its own form of digital currency. However, it has collaborated with the Bank of Canada on a successful experiment using distributed ledger technology on cross-border and cross-currency payments using central bank digital currencies.

Bitcoin

Does Bitcoin have any special status among cryptoassets?

No.

Banks and other financial institutions

Do any banks or other financial institutions allow cryptocurrency accounts?

To date, banks and financial institutions in Singapore do not offer cryptocurrency accounts.

CRYPTOCURRENCY MINING

Legal status

What is the legal status of cryptocurrency mining activities?

At present, no regulations specifically govern the mining of cryptocurrencies in Singapore.

As miners may consume large amounts of electricity to operate the machines required for mining, regulations relating to the approved uses of premises, environmental regulations on air and noise pollution may apply. Employers should also be mindful that where mining activities are considered work, employment law applies and foreign nationals must hold the requisite permits to work in Singapore.

Government views

What views have been expressed by government officials regarding cryptocurrency mining?

The Singapore government has made no specific statements on cryptocurrency mining.

Cryptocurrency mining licences

Are any licences required to engage in cryptocurrency mining?

No.

Taxes**How is the acquisition of cryptocurrency by cryptocurrency mining taxed?****Goods and services tax (GST)**

In respect of DPTs, where there is no close nexus between the service provided by the miner to the persons whose transactions are verified and the mined tokens that the miner receives from the blockchain ecosystem, and the parties paying the mined tokens are not identifiable, the mining of such tokens does not constitute a supply of services for GST purposes.

However, where mining is performed as a service to an identifiable party in return for a consideration, this constitutes a taxable supply of services. If GST-registered, the miner must charge and account for GST.

The miner's subsequent sale or transfer of the mined tokens to a customer in Singapore will be an exempt supply if it takes place on or after 1 January 2020. If such tokens are exchanged for goods or services on or after 1 January 2020, the miner will not be regarded as making a supply of the tokens.

Income tax

Profits derived by businesses which mine and trade cryptocurrencies in exchange for money are subject to income tax.

BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES**Node licensing****Are any licences required to operate a blockchain/DLT node?**

Generally not.

Restrictions on node operations**Is the operation of a blockchain/DLT node subject to any restrictions?**

In general, the operation of a blockchain/DLT node is subject to no restrictions in Singapore. However, depending on the blockchain system and how and what data is transferred to a node, regulatory considerations relating to privacy and data protection will be relevant.

Financial institutions that use blockchain systems should also be alert to cybersecurity risks and take the appropriate measures required by the relevant notices on cyberhygiene issued by the Monetary Authority of Singapore.

DAO liabilities**What legal liabilities do the participants in a decentralised autonomous organisation (DAO) have?**

At present, DAOs are not recognised as legal entities in Singapore. The legal status of a DAO depends on how it is structured and operates, how the DAO code is used and who uses such code. Hence, there is uncertainty as to the legal rights and liabilities attributable to a DAO and the individual members, who may not be identifiable.

Given that a DAO may be created by known and unknown contributors from different jurisdictions, establishing jurisdiction also poses challenges.

In the absence of clear liability attributable to members, and depending on the facts, the developer of the DAO may have legal liabilities.

DAO assets

Who owns the assets of a DAO?

While DAO tokens may amount to a form of investment and have characteristics akin to shares (namely, voting and ownership rights), there is no legal entity for such rights to originate.

Open source

Is DLT based on open-source protocols or software treated differently under the law than private DLT?

This issue is at present unregulated in Singapore and, as such, there is no different treatment for such DLTs.

Smart contracts

Are smart contracts legally enforceable?

Under Singapore's common law system, the existence and enforceability of a contract depends on satisfying the traditional conditions of contract formation.

The Electronic Transactions Act (ETA) provides for the legal recognition of electronic signatures and records. The Infocomm Media Development Authority, in its public consultation of 27 June 2019, stated its preliminary view that the ETA does not prevent the use and formation of smart contracts by organisations and that smart contracts are unlikely to be denied validity or enforceability by sole virtue of their automatic nature.

At present, certain documents must be in writing as a prerequisite for enforceability. These include wills and trusts, and contracts for the sale or other disposition of immovable property, or any interest in such property.

Patents

Can blockchain/DLT technology be patented?

For blockchain/DLT to be patentable in Singapore, it must generally satisfy the following criteria:

- the invention must be new;
- it must involve an inventive step; and
- it must be capable of industrial application.

UPDATE AND TRENDS

Recent developments

Are there any emerging trends, notable rulings or hot topics related to cryptoassets or blockchain in your jurisdiction?

B2C2 Ltd v Quoine Pte Ltd ([2019] SGHC(I) 03) was one of the first reported cases in Singapore involving the trading of cryptocurrency. The dispute related to whether parties were bound by trades automatically (but erroneously) performed by currency exchange platform Quoine in response to orders from algorithmic trading software owned by electronic market maker B2C2.

One key issue was whether the cryptocurrencies were capable of being considered as property. This issue was necessary in order to determine whether Quoine was in breach of trust in unilaterally reversing the trades after it realised that its platform had made a significant error in certain trades made by B2C2. Simon Thorley IJ agreed with the parties that cryptocurrencies meet all the requirements of the classic definition of property, being 'definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability'. While the court concluded that cryptocurrencies are not considered legal tender in the sense of being a currency issued by a government, they do have the fundamental characteristic of intangible property as being an identifiable thing of value.

The court in this case did not further elaborate on where cryptocurrencies fall within the established categories of property.

The recognition of cryptocurrencies as property may have broader implications in areas of law such as insolvency, taxation and tort (of conversion).

LAW STATED DATE

Correct on

Give the date on which the above content is accurate.

26 November 2019.