

## Client Alert

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## Issuers Permitted to Raise up to MYR100 Million from the Issuance of Digital Assets

The Securities Commission has issued the Guidelines on Digital Assets ("**Guidelines**") which permits issuers to raise funds via the issuance of digital currency or digital tokens (collectively, "**Digital Assets**"). The Guidelines are expected to come into force in the second half of 2020.

Pursuant to the Guidelines, all offerings of Digital Assets must be carried out through an initial exchange offering platform operator ("**IEO Operator**").

The Guidelines represent a shift in the regulatory policy of the SC. Prior to the Guidelines coming into force, Digital Assets are prescribed as securities and the issuance/offering of Digital Assets will require the approval of the SC.

The salient requirements under the Guidelines are as follows:

### 1. **Place of Incorporation / Business**

Issuers must be an unlisted company incorporated in Malaysia and carry out its primary business operations in Malaysia. Issuers must have a minimum paid-up capital of MYR500,000.

### 2. **Shareholding and Moratorium**

Board members and senior management of the issuer must, in aggregate, own at least 50% of the shares of the issuer at the time of issuing the Digital Assets.

Post-issuance, there is a moratorium which restricts the board members and senior management of the issuer from disposing more than 50% of the shares held by them until completion of the underlying project in respect of which the Digital Assets have been issued ("**Project**").

Founders are therefore expected to continue playing an active role in the development of the Project after the issuance of the Digital Assets.

### 3. **Limit on Funds Raised**

The maximum funds that an issuer is permitted to raise is 20 times its shareholders' funds in any 12 month period, subject to a maximum cap of MYR100 million.

The Digital Assets offered must be fully subscribed before it is effective, otherwise the monies collected will have to be returned to the investors.



#### **4. Investment Limits**

Different investment limits are imposed on different types of investors, i.e.:

- (a) sophisticated investors - no restriction on investment amount;
- (b) angel investors (i.e., high net worth individuals who are Malaysian tax residents) - maximum of MYR500,000 within any 12 month period; and
- (c) retail investors - MYR2,000 per issuer with a total investment limit not exceeding MYR20,000 within any 12 month period.

#### **5. Closed Loop System**

All Digital Assets which serve as payment instruments must only be used in exchange of the issuer's goods and services (and not those offered by third parties).

#### **6. Whitepaper**

Issuers will have to prepare a whitepaper which serves as a disclosure document so that investors can make an assessment of the merits of the Digital Assets before subscribing for such Digital Assets.

The whitepaper must include, amongst others, key characteristics of the Digital Asset, the business plan of the issuer and information on how the proceeds raised will be utilised.

The whitepaper is akin to a prospectus in a traditional securities offering.


#### **7. IEO Operators**

IEO Operators, which must be Malaysian incorporated entities, will have to be registered with the SC. IEO Operators are required to have a minimum paid-up capital of MYR5,000,000.

IEO Operators who wish to permit trading of Digital Assets on their platform will have to be separately registered as a Digital Asset Exchange under the Guidelines on Recognized Markets issued by the SC.

It is envisaged under the Guidelines that IEO Operators will take on a supervisory function, i.e., to review the whitepaper of issuers, assess if the board members and senior management of the issuer are fit and proper and approve the issuance of Digital Assets.

However, the SC will retain ultimate regulatory authority over issuers and IEO Operators.





The Guidelines provide issuers with an avenue to tap into public funds at an early stage in the business cycle. This is likely to result in cheaper cost of funds for businesses that are still in their infancy. For investors (and this will include fund managers and institutional investors) seeking to diversify their existing portfolios, Digital Assets represent a new class of investment assets in Malaysia available to both sophisticated and retail investors.

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