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ADVOCATES AND SOLICITORS



Speaker
**AGALYA J.
MUNUSAMY**
Partner



Speaker
**KIRTHIKA
PADMANAPAN**
Associate



Moderator
CAROLYN NG
Associate

Wed 25 June 2025
3:00pm (GMT +8)

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MWKA ONLINE TALKS

Cryptocurrency and Anti-Money Laundering Risks: Trends in Malaysia



DATO



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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 33 lawyers and 30 staff.

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Dispute
Resolution



Employment



Individuals &
Families

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 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & eSports

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- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 18.6.2025: Understanding Your Options under Shariah Estate Planning (Wasiat & Hibah)



Kirthika Padmanapan

Associate

- ❖ Associate in our Dispute Resolution Department
- ❖ First Class Honours in Bachelor of Laws (Hons) University of Leeds, Leeds, UK
- ❖ Called to the English Bar in 2021
- ❖ Admitted to the High Court of Malaya in January 2023
- ❖ Areas of practice include strata management, family and citizenship matters, employment law and criminal defence

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Agalya J. Munusamy

Partner

- ❖ Partner in our Criminal, Civil Litigation, Family & Matrimonial teams
- ❖ Bachelor of Laws (Honours) from Aberystwyth University, Wales
- ❖ Admitted to the Malaysian Bar in 2014
- ❖ Involved in advising on criminal defense strategies, anti-money laundering, corruptions charges, customs & smuggling offences, immigration offences
- ❖ Areas of practice include criminal law, general litigation, debt recovery, constitutional matters.

Talk Points

- Overview of BNM, SC and MACC's roles in crypto AML
- How crypto transactions trigger AML red flags
- New AML Trends & Enforcement Actions in Malaysia
- How to Protect Yourself & Your Business

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Applicable Laws

Current Legal Position

- Cryptocurrencies have gained significant traction in Malaysia as innovative financial instruments. However, their decentralised and pseudonymous nature makes them susceptible to misuse for money laundering and terrorism financing.
- To address these risks, Malaysia has developed a comprehensive regulatory framework under the Capital Markets and Services Act 2007 (CMSA), several Orders under the CMSA, the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA), and Securities Commission Guidelines.

The CMSA 2007

- The CMSA regulates Malaysia's capital markets, including securities and derivatives. It provides the legal basis for overseeing digital assets classified as securities.
- Section 7(1) requires any person operating a stock market or derivatives market to be a recognised market operator (RMO) approved by the SC.
- Section 34 reiterates the above by providing the following:
 - (1) *For the purposes of paragraph 7(1)(e), **the Commission may** upon application by a person, **register the person as a recognized market operator** subject to any terms and conditions as the Commission considers necessary.*
 - (2) ***The Commission may, from time to time, add, vary, amend or revoke any terms and conditions** imposed under subsection (1).*

Orders 2019 and 2025 of the CMSA

- Order 2019 subjects digital asset exchanges, IEO platforms, and custodians to SC regulation, requiring registration as RMOs and compliance with AML/CFT measures outlined in the SC's guidelines.
- The 2025 Order was enacted to amend the 2019 Order - Paragraph 2 of the 2019 Order was amended and paragraph 5 of the 2019 Order was deleted.

Orders 2019 and 2025 of the CMSA

- Section 2 of the 2019 Order defines:
 - "digital currency" as a digital representation of value on a distributed ledger, functioning as a medium of exchange and interchangeable with money.
 - "digital token" as a digital representation on a distributed ledger. It also defines "digital token" as a digital representation on a distributed ledger.

When are Digital Currencies treated as Securities?

- Section 3(1) of the 2019 Order provides the following:
 - (1) A digital currency which—*
 - (a) 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) is not issued or guaranteed by any government body or central banks as may be specified by the Commission, is prescribed as securities for the purposes of the securities laws.*
 - is prescribed as securities for the purposes of the securities laws.*

When are Digital Tokens treated as Securities?

- Section 3(2) of the 2019 Order provides the following:
 - (2) A digital token which represents a right or interest of a person in any arrangement made for the purpose of, or having the effect of, providing facilities for the person, where—*
 - (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*
 - (f) the digital token is not issued or guaranteed by any government body or central banks as may be specified by the Commission, is prescribed as securities for the purposes of the securities laws.*

AMLA 2001

- The AMLA 2001 is Malaysia's primary legislation for combating money laundering and terrorism financing. It applies to reporting institutions, including those involved in digital currency activities.
- Section 7 of the AMLA provides the MACC's functions, which includes receiving reports on corruption, investigating suspected offences and examining practices to reduce corruption.
- This provision empowers MACC to investigate financial crimes, including money laundering involving cryptocurrencies, where corruption is a factor

SC Guidelines

- The Guidelines on Prevention of Money Laundering Countering Financing of Terrorism, Countering Proliferation Financing and Targeted Financial Sanctions For Reporting Institutions in the Capital Market (SC Guidelines), amended in 2024, provide a detailed AML/CFT framework for reporting institutions in the capital market, including those handling digital assets.
- Section 6.2 provides a comprehensive lists of principles and policies that reporting institutions should adhere to.
- Section 6.2(e) mandates a customer due diligence process by a reporting institution.

Overview of BNM, SC and MACC's roles in crypto AML

Regulatory Bodies

- There are 3 main regulatory bodies that govern crypto transactions in Malaysia.
 - The Securities Commission Malaysia (SC) oversees digital assets classified as securities;
 - Bank Negara Malaysia (BNM) regulates financial institutions involved in cryptocurrency transactions; and
 - The Malaysian Anti-Corruption Commission (MACC) may investigate cases where corruption intersects with financial crimes.

Securities Commission Malaysia (SC)

- Section 15 of the Securities Commission Malaysia Act 1993 (SCMA) establishes the SC's functions, including regulating capital market activities, supervising exchanges, and ensuring investor protection.
- This empowers the SC to oversee DAXs as Recognised Market Operators (RMOs) and enforce compliance with securities laws, including those related to digital assets.

SC's Power to Implement Guidelines

- Section 377 of the Capital Markets & Services Act 2007 provides the following:

*(1) The **Commission may**, generally in respect of this Act or in respect of any particular provision of this Act, **issue such guidelines and practice notes as the Commission considers desirable**.*

*(2) **The Commission may revoke, vary, revise or amend** the whole or any part of any, guidelines and practice notes issued under this section.*

Bank Negara Malaysia (BNM)

- BNM, as Malaysia's central bank, oversees financial institutions, payment systems, and digital currency exchangers that are not regulated as RMOs under the CMSA.
- Its roles and powers are derived from multiple acts, primarily the Central Bank of Malaysia Act 2009 (CBMA), reflecting its broad mandate to ensure financial stability and combat financial crimes.

BNM's Objective and Functions

- Section 5 of the CBMA establishes BNM and its objectives, including promoting monetary stability and financial stability conducive to economic growth.
- Section 22, on the other hand, empowers BNM to regulate and supervise financial institutions to ensure stability and compliance with laws, including those related to digital currencies.

The MACC

- The Malaysian Anti-Corruption Commission is primarily responsible for combating corruption but may investigate financial crimes involving cryptocurrencies when they are linked to corrupt activities. Its powers are derived from the MACC Act 2009.
- Section 7 of said Act provides the MACC's functions, including receiving reports on corruption, investigating suspected offences, and examining practices to reduce corruption. This empowers the MACC to investigate financial crimes, including money laundering involving cryptocurrencies, where corruption is a factor.

How Crypto Transactions Trigger AML Red Flags

Unusually Large Transactions

- These large transactions usually involve significant sums without clear justification or customer due diligence.
- The lack of verifiable source of funds or recipient identity may raise concerns about money laundering raises an AML red flag.
- The Paragraph 25 of First Schedule of the AMLA designates digital currency exchangers as reporting institutions, requiring them to monitor and report suspicious transactions.
- The SC Guidelines (Part V, Section 11) further mandates reporting to the Financial Intelligence and Enforcement Department of Bank Negara Malaysia (FIED) for large, unexplained transfers.

Frequent Cross-Border Transfers

- High volume or rapid movement of funds across borders, especially to high-risk jurisdictions, may indicate layering or integration of illicit proceeds, raising red flags.
- Section 14(1) of the AMLA implies suspicion based on transaction circumstances, which would include frequent cross-border transfers if it is deemed unusual.

Use of Unregulated or Anonymous Wallets

- Transactions involving wallets not linked to registered digital asset exchangers or lacking know-your-customer (KYC) verification are usually a cause for concern.
- Use of privacy coins or untraceable wallets may obscure transaction trails, triggering AMLA Section 16 investigations.
- Section 7 of the CMSA implies that operating a stock market (including DAXs) without registration as a Recognized Market Operator (RMO) under Section 34 is illegal and carries punishment as prescribed for in subsection (5), which would flag transactions from unregulated platforms.

New AML Trends and Enforcement Actions in Malaysia

Public Consultation Paper 2025

- On 6 May 2025, the SC issued Public Consultation Paper No. 1/2025 on the Proposed Regulatory Framework for Offering and Dealing in Tokenised Capital Market Products.
- The Consultation Paper establishes the following:
 - Proposes regulatory neutrality, treating tokenised products similarly to traditional ones. (section 1.3 and 1.4)
 - A definition of tokenised products as digital representations of securities, derivatives, or unit trust schemes using distributed ledger technology (DLT). (section 2.3)
 - Focuses on “digital twin” tokens (traditional products with a tokenisation wrapper) due to lower risks compared to native tokens. (section 2.5 (a) & (b), section 2.6, section 2.7)
 - Requires compliance with existing laws, including the 2019 Order, and emphasises governance, risk management, and disclosure. (section 3.2, 4.1 and 4.2)

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SC's enforcement action against Binance, 2021

- This action underscores the SC's commitment to ensuring compliance with AML/CFT regulations, as registered RMOs must adhere to the SC Guidelines, including the Crypto Travel Rule and STR requirements.
- Binance had operated a recognized market (digital asset exchange) without registering as a RMO with the SC under Section 34 of the CMSA.
- This highlights the potential ramifications of operating as a recognised market without prior registration.

SC's enforcement action against Binance, 2021

- Accordingly, the SC has issued a public reprimand against Binance for continuing to operate illegally in Malaysia despite being included in the SC's Investor Alert List in July 2020. In this regard, the public reprimand was issued against Binance Holdings Limited (Registered in the Cayman Islands), its CEO Zhao Changpeng, as well as three other Binance entities, namely Binance Digital Limited (Registered in the UK), Binance UAB (Registered in Lithuania) and Binance Asia Services Pte Ltd (Registered in Singapore).

SC's enforcement action against Binance, 2021

- All four Binance entities have been ordered by the SC to:
 - disable the Binance website (www.binance.com) and mobile applications in Malaysia within 14 business days from 26 July 2021;
 - immediately cease all media and marketing activities, including circulating, publishing or sending any advertisements and/or other marketing material, whether via emails or otherwise, to Malaysian investors; and
 - immediately restrict Malaysian investors from accessing Binance's Telegram group.

SC's enforcement action against Bybit, 2024

- Against Bybit Technology Limited (previously known as Bybit Fintech Limited) (Bybit), and its CEO, Ben Zhou (Yuchen Zhou)
- This enforcement action reinforces the requirement for DAXs to register with the SC as RMO and comply with AML/CFT obligations, highlighting the risks of operating without authorisation.
- Similar to the previous enforcement action, Bybit had operated without prior registration with the SC.
- Both enforcement actions saw the affected parties reprimanded and ordered to disable their platforms pursuant to Section 354 (3) of the CMSA.

SC's enforcement action against Bybit, 2024

- The SC has directed Bybit to:
 - disable Bybit's website and mobile applications or any other digital application platform in Malaysia within 14 business days from 11 December 2024;
 - immediately cease circulating, publishing or sending any advertisements, whether in social media posts or otherwise, to Malaysian investors; and
 - immediately terminate Bybit's Telegram support group for Malaysians.
- Ben Zhou, as the CEO of Bybit, has also been specifically directed to ensure that the above directives are complied.

Sim Kwang Kai, Adrian v Johnathon Wong Futt Po [2025] MLJU 1239

- The recent case of Sim Kwang Kai addresses a dispute involving cryptocurrency (USDT), allegations of misappropriation, and the Defendant citing money laundering and regulatory breaches.
- The case provides insights into judicial perspectives on unregulated digital assets, the risks of financial crimes, and the interplay with existing laws.
- The Plaintiff had sought an order for Mareva Injunction to stop the Defendant from dissipating assets.
- The Court ultimately found that the threshold to grant a Mareva Injunction was not met based on the available evidence and the application was dismissed.

Johnathan Wong Futt Po v Koh Chin Wei & Anor [2024] MLJU 2925

- [27] **Cryptocurrencies are digital assets. In Malaysia, cryptocurrencies are not illegal but not legal tender.** The 1st Defendant, as a witness for the 2nd Defendant, testified that the 2nd Defendant did receive payment of cryptocurrency USDT 596,137.34 from Marco Tan (DW-2), **being the total price for the said Lamborghini and a Ferrari sports car purchased by Marco Tan for himself.** Even though cryptocurrency is not legal tender in Malaysia and the payment was not through a commercial bank, **digital currencies could be considered as valuable consideration under the Contracts Act 1950.** Contract law in Malaysia does not enquire into the adequacy of consideration, and therefore, theoretically a bullock cart could be the consideration in exchange for a Lamborghini sports car, and likewise digital assets could be used to pay for goods if the seller is willing to accept it as valuable consideration. That is the fundamental rule of freedom of contract, subject to the provisions of Sections 25 to 31 of the Contracts Act 1950 which render agreements, that run afoul of those provisions, void.

Johnathan Wong Futt Po v Koh Chin Wei & Anor [2024] MLJU 2925

- [28] For the purpose of curbing money laundering, the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (“AMLA”) included digital assets in its definition of “proceeds of unlawful activity” by defining it as “assets of every kind, whether corporeal or incorporeal... tangible or intangible, however acquired...”.

Johnathan Wong Futt Po v Koh Chin Wei & Anor [2024] MLJU 2925

- [29] **Though the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment to the First & Second Schedule) Order 2017 had designated the operators of digital assets exchanges**, i.e. those that offer services of converting digital currency into fiat money, fiat money into digital currency and digital currency into other types of digital currency, as “reporting institutions” under AMLA, **it is an inherently formidable task to enforce the law in this area because such transactions could be conducted online without going through any licensed bank in Malaysia.** There is a stark contrast with the traditional mode of payment for sale of goods in Malaysia which has been the currency of Malaysia, i.e. Ringgit Malaysia, issued by Bank Negara Malaysia our central bank, recognised by our law to be legal tender for the value stated. For international trade, foreign currencies have been used but it had always been the currency of a sovereign state. Taking the facts of this case as an example, if not for the dispute between the Plaintiff and the 2nd Defendant ending up as a civil suit in this Court, the sale of those two cars in September 2021 which were conducted by way of a cryptocurrency – by transferring USDT 596,137.34 as payment for two cars – would have remained unknown. No stamp duty or sales tax could be collected by the government for the transaction because it was hidden from Inland Revenue Board and Customs and Excise Department.

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Johnathan Wong Futt Po v Koh Chin Wei & Anor [2024] MLJU 2925

- [37] In view of the Plaintiff's own admission that the Trust Deed was created for the intention of evading income tax, should this Court lend a hand to the Plaintiff to enforce it? The law that empowers the courts to strike down sham instruments had been expounded and applied in numerous cases.
- [40] As admitted by the Plaintiff/Beneficiary, the Trust Deed was created for the purpose of avoiding income tax. The Plaintiff's intention was to proceed with his purchase of the said Lamborghini which cost more than RM1 million but to conceal the fact that he was its purchaser, by giving a false impression to third parties, including the Inland Revenue Board, Customs & Excise Department and the Insolvency Department, that the Lamborghini remains unsold by the 2nd Defendant in 2021 and was purchased at later date – when in fact the Plaintiff had purchased it and taken delivery in September 2021. This was to avoid the Inland Revenue Board going after him for undeclared income besides avoiding sales tax.
- [41] The Trust Deed also had the illegal effect of hiding the Plaintiff's purchase of the said Lamborghini from the Insolvency Department as he was still an undischarged bankrupt in year 2021. Though the Plaintiff did obtain an order for annulment of his bankruptcy by paying off his creditors in full in year 2022, he was still required by law to declare his income to the Insolvency Department at the material time.
- [42] I therefore rule that the Trust Deed relied on by the Plaintiff to support his cause of action was a sham instrument and ought to be struck down. It was an unenforceable instrument in a court of law.

How to protect yourself and your
business

For Investors

- Use Licensed Exchanges
 - Only trade on SC-approved platforms like Luno or Tokenize.
 - Why? They follow AML rules and protect your funds.
- Avoid Red Flags
 - Don't use privacy coins (Monero, Zcash) for large transactions—they attract scrutiny.
 - Don't accept crypto from unknown sources (could be stolen funds).
- Keep Records
 - Save wallet addresses, transaction IDs, and exchange statements.
 - For tax purposes: LHDN requires crypto gains to be declared.

For Businesses

- Registering with SC
 - DAXs, IEO (Initial Exchange Offering) platforms/operators, and custodians must register as Recognised Market Operator (RMO).
 - Section 7 of the CMSA implies the requirement for registration prior to operate.
 - Section 34 of the CMSA allows the Securities Commission Malaysia (SC) to register electronic facilities as Recognized Market Operators (RMOs), requiring DAXs, IEO platforms, and custodians to apply for registration to operate legally.

Implement CDD and KYC

- Conducting thorough customer due diligence and know-your-customer checks is essential to ensuring compliance with all guidelines and/or regulations.
- Section 16(1) of the AMLA explicitly requires reporting institutions, including digital currency exchangers, to verify the identity of customers and conduct ongoing due diligence to mitigate money laundering risks.
- Section 8 of the SC Guidelines on Prevention of Money Laundering and Terrorism Financing provides how a CDD is to be conducted, thoroughly.

Adhere to the Crypto Travel Rule

- Section 9 of the SC Guidelines on Prevention of Money Laundering and Terrorism Financing Introduces the Crypto Travel Rule, effective from 1 April 2022, requiring reporting institutions to include originator and beneficiary information in wire transfers of digital assets, with no de minimis threshold, to enhance transparency.
 - Required information on the Originator Customer: Name, Account Number or transaction identifier, NRIC/Passport No, address
 - Required information on the beneficiary Customer: Name, Account Number or transaction identifier
- Section 25 of the AMLA designates entities exchanging digital currencies as reporting institutions and as such would need to adhere to the Crypto Travel Rule's requirements for transaction information sharing.
- Sharing originator and beneficiary information for digital asset transactions is therefore essential to avoid any potential complications.

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Report Suspicious Transactions

- Section 14(1) of the AMLA explicitly requires reporting institutions to submit Suspicious Transaction Reports (STRs) to the Financial Intelligence and Enforcement Department (FIED) as soon as practicable after forming a suspicion of unlawful activity or terrorism financing.
- Section 11 of the SC's Guidelines on Prevention of Money Laundering and Terrorism Financing mandates the reporting of all suspicious transactions, including attempts, to FIED via specified methods (e.g., email to str@bnm.gov.my or the Financial Intelligence System).

Maintaining Records

- Section 19(1) of the AMLA explicitly requires reporting institutions to maintain records of transactions and customer identification for at least seven years, or longer if related to ongoing investigations.
- Section 10 of the SC Guidelines on Prevention of Money Laundering and Terrorism Financing reinforces this obligation, specifying that records (e.g., customer identification, transaction details) must be retained for a minimum of seven years to facilitate audits and investigations.

Questions?

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Thank you!

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