

THE 233RD and 234TH SHARIAH ADVISORY COUNCIL OF THE SECURITIES COMMISSION MALAYSIA MEETING (29 JUNE 2020 AND 20 JULY 2020)

DIGITAL ASSETS FROM SHARIAH PERSPECTIVE

INTRODUCTION

Digital assets as regulated under the jurisdiction of SC consist of digital currency¹ and digital token (Digital Assets). The definition and scope of digital currency and digital token which were defined as securities are as prescribed under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019.² Several issues from Shariah perspective in relation to Digital Assets were presented to the SAC.

Since there are Digital Assets which are categorised as capital market instruments, the SAC had discussed the following issues from Shariah perspective:

- (i) Whether Digital Assets can be recognised as *mal* (asset)³ from Shariah perspective?;
- (ii) Whether Digital Assets can be classified as currency or '*urudh* (goods)⁴?; and
- (iii) How to determine the Shariah status of a digital token?

¹ Refers to a digital currency that is approved by the SC for trading on *Digital Asset Exchange (DAX)*.

² The definition and scope of digital currency and digital token are as prescribed under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 which can be retrieved at the following SC's website: https://www.sc.com.my/ani/documentms/download.ashx?id=8c8bc467-c750-466e-9a86-98c12fec4a77

³ According to the majority of Islamic scholars, *mal* refers to something that has value, can be traded and shall be subject to compensation for anyone who damage it. al-Suyuti, *al-Asybah wa al-Naza'ir*, 1983, p. 409.

⁴ Ibn Qudamah defines` urudh as mal other than currency such as plants, animals, lands and others. Meanwhile, for alBujairimi, anything that is exchanged with currency, it is considered as` urudh. Ibn Qudamah, *al-Mughni*, v. 4, p. 249, al-Bujairimi, *al-Bujairimi* ` *ala al-Khatib*, v. 3, p. 55.

RESOLUTION

SAC in a series of its meetings had discussed issues in relation to Digital Assets from Shariah perspective. The discussions on Digital Assets in the SAC meetings are limited to Digital Assets that are regulated by the SC. In the said SAC meetings, the SAC had resolved the following:

A. Digital Currency

Digital currency is recognised as *mal* from Shariah perspective. The SAC had viewed digital currency from two scopes, as follows:

(1) Digital currency that is based on technology without any underlying

Digital currency in this form is categorised as 'urudh and it is not a currency from Shariah perspective. Such digital currency is not categorised as *ribawi* items. Therefore, the trading of such digital currency is not subject to the principle of bai' al-sarf (currency exchange).

(2) Digital currency that is backed by ribawi items

(i) Digital currency that is backed by gold, silver and currency

If a digital currency is backed by *ribawi* items comprising gold, silver and currency, it is categorised as a currency from Shariah perspective. Hence, the trading of such digital currency is subject to the principle of *bai* ` *al-sarf*.

(ii) Digital currency that is backed by *ribawi* items other than gold, silver and currency

If a digital currency is backed by *ribawi* items other than gold, silver and currency, it is categorised as *amwal ribawiyyah* (*ribawi* items).

Therefore, the trading of such digital currency is subject to the Shariah requirements of *ribawi* items.

B. Digital Token

Digital token is recognised as *mal* under the category of `*urudh* from Shariah perspective.

In determining the Shariah status of a digital token, the following matters must be fulfilled:

- (i) The proceeds raised from the issuance of the digital token must be utilised for Shariah-compliant purposes;
- (ii) The rights and benefits attached to the digital token must be Shariahcompliant; and
- (iii) In the event that the utilisation of proceeds under item (i) and the entitlement of rights and benefits under item (ii) above are for mixed activities of Shariah-compliant and Shariah non-compliant purposes, the existing SAC resolution on utilisation of sukuk proceeds and the business activities benchmark under the Shariah screening methodology for listed companies on Bursa Malaysia are applicable.

If a digital token is backed by *ribawi* items, the trading of such digital token is subject to the Shariah requirements for trading of *ribawi* items.

This resolution is not applicable to any Digital Assets which are outside the jurisdiction of SC.

The SAC has also resolved that investment and trading of Digital Assets that fulfil the above requirements and which are traded on Digital Asset Exchange (DAX) registered with SC are permissible.