



# DIGITAL ASSETS SERIES: CHAPTER 4

LEGAL UPDATE  
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## Chapter 4: The Regulatory Framework for Persons Seeking to Raise Funds via IEO in Malaysia

In this Chapter 4 of our Digital Assets Series, we consider the regulatory framework for persons seeking to raise funds via initial exchange offering (“**IEO**”) in Malaysia.

### 1. Introduction

- 1.1 The [Guidelines on Digital Assets](#) (“**DA Guidelines**”) issued by the Securities Commission Malaysia (“**SC**”) apply to all issuers seeking to raise funds through a digital token offering on an IEO platform.
- 1.2 The DA Guidelines are to be read together with other relevant laws and guidelines including payment services and foreign exchange administration laws administered by Bank Negara Malaysia (“**BNM**”). To illustrate this, where an issuer intends to issue a digital token which has the features of an existing type of securities such as unit trust funds, bonds, warrants or options, the issuer must also comply with the existing requirements for such issuance as set out in the relevant SC’s guidelines in addition to meeting the requirements under the DA Guidelines.
- 1.3 In Paragraph 2 of this Article, we briefly set out some of the provisions under the DA Guidelines which apply to an issuer, including the requirements that an issuer must satisfy prior to making a digital token offering.

### 2. Provisions under the DA Guidelines applicable to an issuer

#### 2.1 Eligibility

<b>General requirements</b>	<p>An issuer must:</p> <ol style="list-style-type: none"> <li>(a) be a company (excluding an exempt private company and public-listed company) or limited liability partnership (“<b>LLP</b>”) incorporated in Malaysia. However, an unlisted subsidiary or a special purpose vehicle (“<b>SPV</b>”) of a public-listed company may qualify as an issuer;</li> <li>(b) have its main business operations carried out in Malaysia; and</li> <li>(c) only raise funds through IEO and not through any other means.</li> </ol>
<b>Financial requirements</b>	<ol style="list-style-type: none"> <li>(a) An issuer (other than LLP) must have a minimum: <ol style="list-style-type: none"> <li>(i) paid-up capital of RM500,000; and</li> <li>(ii) shareholders’ funds of RM500,000 maintained at all times.</li> </ol> </li> <li>(b) LLP: A minimum capital of RM500,000 maintained at all times.</li> </ol>

## 2.2 Directors and Senior Management

<b>Directors and Senior Management</b>	The directors and senior management must be fit and proper at all times.
<b>Place of Residence</b>	At least two (2) directors whose principal or only place of residence is in Malaysia at all times.
<b>Equity interest in the issuer</b>	The directors and senior management must, in aggregate, own at least 50% equity holding in the issuer on the date of issuance of the digital tokens.
<b>Moratorium on equity interest</b>	<p>(a) Post issuance of the digital tokens, the directors and senior management may only sell, transfer or assign not more than 50% of their respective equity holding in the issuer until completion of the underlying business or project referred to in the white paper for which the issuer seeks to raise funds through an IEO ("<b>IEO project</b>").</p> <p>(b) Moratorium also applies to those who are subsequently appointed as a director or senior management pursuant to their purchase of any equity in the issuer post issuance of the digital tokens.</p>

## 2.3 Funds raised through an IEO

<b>Fundraising limit</b>	20 times of the issuer's shareholders' funds (or in the case of an LLP, the issuer's capital) within any continuous 12-month period, subject to a ceiling of RM100 million.						
<b>Sufficient gross proceeds to undertake IEO project</b>	The issuer must demonstrate to the IEO operator that the gross proceeds to be raised from the IEO would be sufficient to undertake the IEO project as proposed in the white paper.						
<b>Investment limit</b>	<table border="0"> <tr> <td><u>Retail investors:</u></td> <td><u>Angel investors:</u></td> <td><u>Sophisticated investors:</u></td> </tr> <tr> <td>Maximum of RM2,000 per issuer and not more than RM20,000 within a 12-month period</td> <td>Maximum of RM500,000 within a 12-month period</td> <td>No restriction on investment limit</td> </tr> </table>	<u>Retail investors:</u>	<u>Angel investors:</u>	<u>Sophisticated investors:</u>	Maximum of RM2,000 per issuer and not more than RM20,000 within a 12-month period	Maximum of RM500,000 within a 12-month period	No restriction on investment limit
<u>Retail investors:</u>	<u>Angel investors:</u>	<u>Sophisticated investors:</u>					
Maximum of RM2,000 per issuer and not more than RM20,000 within a 12-month period	Maximum of RM500,000 within a 12-month period	No restriction on investment limit					
<b>Release of funds raised in an IEO</b>	<p>(a) Funds will be released by the IEO operator to the issuer upon fulfilment of the following conditions:</p> <p>(i) targeted amount sought to be raised in the IEO project ("<b>Target Amount</b>") has been met;</p>						

	<p>(ii) there is no material change affecting the IEO, IEO project or the issuer during the offer period; and</p> <p>(iii) such other conditions as may be imposed by the IEO operator.</p> <p>(b) For the purposes of (a) above, a “material change” may include any of the following matters:</p> <p>(i) the discovery of a false or misleading statement in any disclosures in relation to the IEO, the IEO project or the issuer;</p> <p>(ii) the discovery of any material omission of information that may affect the investors of the digital tokens; and</p> <p>(iii) any material development in the circumstances relating to the IEO, IEO project or the issuer.</p>
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#### 2.4 Events of refund

<b>Digital tokens must be fully subscribed</b>	The digital tokens issued by an issuer must be fully subscribed, otherwise all monies collected from investors shall be refunded.
<b>Oversubscription of digital tokens</b>	An issuer is not allowed to keep any amount exceeding the Target Amount. Where the funds raised have exceeded the Target Amount, i.e. there is an oversubscription, the surplus of the funds raised shall be refunded to the respective investors who subscribed for the digital tokens after the Target Amount was met.
<b>Cooling-off right</b>	<p>(a) All investors (save for an investor who is a staff of the issuer) are entitled to a cooling-off right which must be exercised during the cooling-off period, which shall be no fewer than six (6) business days commencing from the closing date of the offer period.</p> <p>(b) Upon exercise of the cooling-off right, the investor shall be entitled to a refund amounting to the sum equivalent of:</p> <p>(i) the purchase price paid for the digital token; and</p> <p>(ii) any other charges imposed on the day the digital token was purchased.</p>
<b>Publication of supplementary white paper</b>	Where a supplementary white paper (please refer to Paragraph 2.6 of this Article for more details) has been published on the IEO platform, an investor of the IEO project may withdraw his/her/its subscription of the digital tokens within six (6) business days from the date of receipt of notice in respect of the supplementary white

	paper, and any amount paid by the investor for the purposes of subscribing to the digital tokens offered shall be refunded.
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## 2.5 Application to raise funds through an IEO

<b>Form and manner</b>	<p>(a) An issuer must submit its application to the IEO operator in the form and manner as may be prescribed by the IEO operator for approval.</p> <p>(b) The application must include:</p> <p>(i) a fit and proper declaration of all the issuer’s directors and senior management; and</p> <p>(ii) a white paper which must contain information as specified under the DA Guidelines (please refer to Paragraph 2.6 of this Article for more details).</p>
<b>Innovative solution or meaningful digital value proposition</b>	<p>(a) An issuer must demonstrate in its application that the IEO project provides an innovative solution or a meaningful digital value proposition for Malaysia.</p> <p>(b) An IEO project shall be considered to provide an “innovative solution” or “digital value proposition” if, among others, the IEO project:</p> <p>(i) provides a solution or addresses an existing market need or problem; or</p> <p>(ii) improves the efficiency of an existing process or service undertaken by the issuer or the industry.</p>

## 2.6 White paper

<b>Definition</b>	The document issued by the issuer accompanying an IEO describing, among others, the detailed information of the issuer, the IEO and the IEO project, and includes a supplementary white paper.
<b>Approval and submission to SC</b>	<p>(a) The white paper must be approved by the IEO operator before any digital tokens may be offered by an issuer.</p> <p>(b) A copy of the white paper which has been furnished to the IEO operator shall be submitted to the SC in the form and manner as may be prescribed by the SC.</p>
<b>Content requirements</b>	The white paper must contain information that would enable an investor to make an informed assessment of the digital token before subscribing for the digital token, including:

	<ul style="list-style-type: none"> <li>(a) the objective or purpose of the IEO, including detailed information on the IEO project to be managed and operated by the issuer;</li> <li>(b) the key characteristics of the digital token;</li> <li>(c) the business plan of the issuer;</li> <li>(d) the Target Amount and the subsequent use and application of the proceeds thereafter illustrated in a scheduled timeline for drawdown and utilisation of proceeds (schedule of proceeds);</li> <li>(e) any rights, conditions or functions attached to digital tokens including any specific rights attributed to a token holder;</li> <li>(f) associated challenges and risks as well as mitigating measures thereof; and</li> <li>(g) such other information as required under the DA Guidelines.</li> </ul>
<p><b>Supplementary white paper</b></p>	<p>Where an issuer becomes aware that:</p> <ul style="list-style-type: none"> <li>(a) a matter has arisen and information in respect of that matter would have been required under the DA Guidelines to be disclosed in the white paper if the matter has arisen at the time the white paper was prepared;</li> <li>(b) there has been a material change affecting a matter disclosed in the white paper; or</li> <li>(c) the white paper contains a statement or information that is false or misleading, or from which there is a material omission,</li> </ul> <p>subsequent to the submission of the white paper but before the closing of the offer period of the IEO, the issuer must notify the IEO operator and as soon as practicable, furnish a supplementary white paper to the IEO operator and the SC.</p>

## 2.7 Obligations of an issuer

<p><b>General</b></p>	<p>An issuer must, among others:</p> <ul style="list-style-type: none"> <li>(a) ensure that it does not submit or provide any document or information that is false or misleading, or from which there is material omission;</li> <li>(b) immediately notify the IEO operator and the SC of any failure to comply with any requirement of the DA Guidelines;</li> </ul>
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	<p>(c) retain all relevant documents and agreements related to the IEO for a period of seven (7) years from the date the documents or agreements are submitted to the IEO operator; and</p> <p>(d) provide to the SC any information or assistance relating to the digital tokens as the SC deems necessary.</p>
<b>Utilisation of proceeds</b>	<p>An issuer must:</p> <p>(a) provide a confirmation to the SC that the drawdowns have been utilised for the purposes stated in its white paper in such form and manner as the SC may specify; and</p> <p>(b) must not make any changes to the utilisation of proceeds post issuance of the digital tokens or any changes that affect the token holder's rights, unless prior approval of the token holders representing 75% of the total amount of tokens held by all token holders present and voting has been obtained.</p>
<b>Conflict of interest</b>	<p>An issuer must establish a framework which sets out the policies and procedures to effectively and efficiently manage issues of conflict of interest including potential conflicts of interest and any related party transactions which may arise in the course of the IEO project.</p>
<b>Notification to the IEO operator for material changes</b>	<p>(a) Where a material change occurs affecting the IEO, the IEO project or the issuer, the issuer must, immediately upon knowing or becomes aware of the event, inform the IEO operator of such change for purposes of announcement on the IEO platform.</p> <p>(b) Post issuance of the digital tokens, the issuer must also immediately notify the IEO operator of any sale, transfer or assignment involving 5% or more shareholding in the issuer.</p>
<b>Reporting and audit</b>	<p>An annual report and semi-annual report which contain necessary information on the performance of the underlying business or project, including:</p> <p>(a) the total amount of digital tokens issued and in circulation;</p> <p>(b) the status of the utilisation of the digital token's proceeds by the issuer;</p> <p>(c) the status of the IEO project; and</p> <p>(d) audited financial statements for the latest financial year</p> <p>must be prepared and cause to be published by the issuer on the IEO platform to enable token holders to evaluate its performance.</p>
<b>Marketing and promotion</b>	<p>(a) All information disseminated for marketing or promotion must be consistent with the contents of the white paper and</p>

	<p>appropriately displayed in all marketing and promotional materials including on the issuer's website.</p> <p>(b) No third-party individual(s) or entity, other than an IEO operator, may be engaged to endorse or represent the issuer with the intended purpose of marketing, promoting, gaining publicity or soliciting funds for its IEO.</p>
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## 2.8 Other requirements

<b>Hosting on other platforms</b>	An issuer must not be hosted concurrently on multiple IEO platforms or on an equity crowdfunding or peer-to-peer platform.
<b>Closed loop</b>	A digital token that serves as a payment instrument may only be used in exchange for the issuer's goods and services as disclosed in the white paper approved by the IEO operator.

## 2.9 Powers of SC

<b>Additional requirements</b>	<p>The SC may at any time:</p> <p>(a) impose additional financial requirements; and/or</p> <p>(b) vary, add or remove any requirements or terms and conditions, on an issuer that commensurate with the nature, operations and risks posed by the issuer.</p>
<b>Directions</b>	<p>The SC may, at any time, issue a direction to the issuer, its board of directors, any of its directors, senior management or any other person, if the SC:</p> <p>(a) is satisfied that it is necessary or expedient for the –</p> <p style="padding-left: 20px;">(i) purposes of ensuring fair and orderly markets; or</p> <p style="padding-left: 20px;">(ii) protection of the token holders, or in the public interest; or</p> <p>(b) is of the opinion that the IEO project is no longer viable or sustainable.</p>
<b>Overruling an IEO operator's decision</b>	<p>(a) The SC may, at any time before the funds raised is released to the issuer, do any or all of the following:</p> <p style="padding-left: 20px;">(i) revoke an approval granted by an IEO operator for any IEO;</p> <p style="padding-left: 20px;">(ii) issue a direction to suspend the IEO; or</p>



	<p>(iii) issue a direction to defer the implementation of the IEO.</p> <p>(b) The powers under (a) above may be exercised by the SC if it becomes aware of any of the following:</p> <p>(i) the issuer has breached any requirement under securities laws, the DA Guidelines or any other guidelines issued by the SC;</p> <p>(ii) the issuer has failed to comply with any terms or conditions imposed by the IEO operator on the issuer;</p> <p>(iii) the application, including the white paper, contains any statement or information that is false or misleading or from which there is a material omission;</p> <p>(iv) there is a concern with the issuer's corporate governance record or with the integrity of any of the issuer's directors and senior management; or</p> <p>(v) the SC has reason to believe that the approval of the application would be contrary to public interest.</p>
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### 3. Perspective

3.1 With the introduction of the IEO regulatory framework through the issuance of the DA Guidelines by the SC, businesses now have the option of undertaking an IEO to raise capital by offering digital tokens. The inception of the IEO regulatory framework under the DA Guidelines is an applaudable effort by the SC in ensuring and/or restoring the integrity of the digital assets market which in turn, helps to significantly bolster investors' confidence in an area that was previously widely perceived as dubious and riddled with various risks.

3.2 In our view, IEO may emerge as a viable fundraising option in Malaysia. A few aspects may contribute to such views, including:

- (a) ***Options to structure a digital token issuance*** – Unlike conventional fundraising methods, in an IEO, an issuer is not limited to selling its equity (as in the case of private placement or initial public offering (“**IPO**”)) or incurring debt obligations (as in the case of securing credit facilities from financial institutions or issuance of debentures). Digital tokens may be structured differently based on the objectives and business models of the issuer, which may entail tokenisation of its assets, issuing of digital tokens which may be exchanged for services and goods, issuing of digital tokens carrying the features of equity or debts, or the combination of any of those features, subject to compliance with the relevant securities laws and guidelines issued by the SC.

- (b) **Comparable returns with other fundraising avenues** – An issuer is allowed to raise up to 20 times of its shareholders' funds in an IEO in any 12-month period, subject to a maximum of RM100 million, which is 10 times that of the maximum amount allowed to be raised by an issuer through an equity crowdfunding platform in its lifetime, and also appears to be comparable to the amount of proceeds that an issuer may be able to raise on the LEAP Market and ACE Market. Despite such comparable returns, the process involved in an IEO as required under the DA Guidelines appear to be less complex and more cost-effective than those in an IPO. Therefore, from a procedural, cost and time perspective, IEO may command certain advantages.
- (c) **Better accessibility by investors** – Tokenisation of assets in a digital token offering may bring about investment opportunities to those who could not afford to purchase costly investment products. Subject to compliance with securities laws and the guidelines issued by the SC, tokenisation potentially unlocks liquidity for asset-owning issuers by giving them access to larger pool of investors, including retail investors who are only seeking fractional interest in certain assets which may be otherwise too costly for them.

3.3 Nevertheless, IEO may not be suitable for all businesses in Malaysia. For instance:

- (a) **Innovation Requirement under the DA Guidelines** - An issuer must first demonstrate that its business provides an innovative solution or a meaningful digital value proposition for Malaysia, as required under the DA Guidelines. Not all businesses may be able to fulfil such requirement.
- (b) **Challenges in asset tokenisation** - Essentially, asset tokenisation is the process of converting assets and rights or claims to an asset into a digital representation or a digital token in a blockchain network, which may present certain challenges. For instance, if a token is a digital representation of a physical asset, the issuer needs to ensure that the physical asset movement is seamlessly linked to the digital token movement in the digital network, the uniqueness and integrity of the digital token in and across the network must be secured, the digital token's ability to hold, transfer and preserve the value of the assets that it represents must be ensured. In addition, if a digital token is to be transferred to another value network or secondary market, the value of such digital token must also be preserved.
- (c) **Liquidity** - The liquidity of digital tokens issued on an IEO platform may pose concerns to investors who prioritise certainty of exit, whether on a short- or mid-term basis, from their investments. Secondary trading of digital tokens is currently not absolute as it remains subject to the willingness of a registered digital asset exchange operator to facilitate trading of the digital token on its platform. The secondary trading of digital tokens also requires further approval by the SC. At this juncture, there are no express guidelines on how the secondary trading of digital tokens will be assessed and approved.

3.4 Fundraising by the issuance of digital tokens via an IEO could be transformative and is likely to offer exciting possibilities for the financial markets. The entire IEO framework as encapsulated in the DA Guidelines provides high degree of regulation and transparency for investors. It is however still in its infancy and we foresee that market adoption of IEO as a fundraising avenue will still need time. We hope that all stakeholders and participants in the value chain in Malaysia will get closer and look for ways to build or bridge a more widespread adoption of IEO as an alternative fundraising avenue.

*In the previous chapters of our Digital Assets Series, we offered a brief introduction to digital assets and its regulatory framework in Malaysia ([Chapter 1](#)), considered IEO and the regulatory framework for IEO operators in Malaysia ([Chapter 2](#)), and discussed digital asset custodian ("DAC") and the regulatory framework for DACs in Malaysia ([Chapter 3](#)).*

*In the next chapter of our Digital Assets series (Chapter 5), we will discuss IEO and initial public offering ("IPO") in Malaysia, and the key differences between such fundraising avenues.*

***This legal update is for general information only and is not a substitute for legal advice.***

#### **Further Information**

Should you have any queries as to how these developments may affect your business, please do not hesitate to contact us.



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For more information on other insights shared by KhaiLing Yau Chambers, please click [here](#).