

Legal Update: Securities Commission Malaysia (SC) takes enforcement actions against Binance for illegally operating a digital asset exchange (DAX) in Malaysia

(1) SC TAKES ENFORCEMENT ACTIONS AGAINST BINANCE

Binance is currently the largest cryptocurrency exchange in the world in terms of daily trading volume. As at the date of publication of this article, it records a spot daily trading volume of more than USD 20 billion and offers trading of more than 300 types of cryptocurrencies¹. It has also launched its own cryptocurrencies, including Binance Coin (BNB), which is currently the cryptocurrency with the fourth highest market capitalisation, ranked after Bitcoin (BTC), Ethereum (ETH) and Tether (USDT)².

Pursuant to Sections 7(1) and 34(1) of the Capital Markets and Services Act 2007, all DAX operators must be registered as Recognized Market Operators by the SC. Binance is not registered with the SC to operate a DAX in Malaysia. It had been included in the SC's [Investor Alert List](#) in July 2020 for "operating a recognized market without authorisation from the SC".

On 30 July 2021, the SC announced that it has taken enforcement actions against Binance for continuing to illegally operate a DAX in Malaysia despite being included in the SC's Investor Alert List last year. The SC's media release can be accessed [here](#).

The enforcement action taken by the SC was in the form of a public reprimand issued against Binance Holdings Limited (registered in the Cayman Islands), its Chief Executive Officer Zhao Changpeng, as well as three other Binance entities, namely Binance Digital Limited (registered in the United Kingdom), Binance UAB (registered in Lithuania) and Binance Asia Services Pte Ltd (registered in Singapore).

The said Binance entities have been ordered by the SC to:

1. disable the Binance website (www.binance.com) and mobile applications in Malaysia within 14 business days from 26 July 2021;
2. 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
3. immediately restrict Malaysian investors from accessing Binance's Telegram group.

The SC has also issued a specific order to Zhao, as the Chief Executive Officer of Binance Holdings Limited, to ensure that its directives are carried out. The SC further urges the investors who

¹ <https://coinmarketcap.com/rankings/exchanges/>

² <https://coinmarketcap.com/all/views/all/>

currently have accounts with Binance to immediately cease trading through its platform and to withdraw all their investments immediately.

This is the second time in 2021 that the SC has issued public reprimand against a DAX for illegally operating in Malaysia. In 2020, Remitano was included in the SC's [Investor Alert List](#). Subsequently on 13 April 2021, the SC [announced](#) that it has reprimanded Remitano for operating a DAX in Malaysia without authorisation from the SC. In furtherance of the reprimand, SC collaborated with the Malaysian Communications and Multimedia Commission (MCMC) to block Remitano's website and wrote to Google and Apple to disable the operation of Remitano's mobile applications in Malaysia.

Actions taken by regulators in other jurisdictions against Binance

The SC's actions against Binance appear to resonate with recent actions taken by regulators against the Binance group in other jurisdictions:

Date	Jurisdiction	Regulatory authority	Action(s) Taken
25 June 2021	Japan	Financial Services Agency ("FSA")	Issued a warning to Binance for operating in the country without authorisation by the FSA ³ .
26 June 2021	United Kingdom	Financial Conduct Authority ("FCA")	Issued a consumer warning on Binance Markets Limited and the Binance Group as the said entities are not permitted by the FCA to undertake any regulated activities in the United Kingdom ⁴ .
1 July 2021	Cayman Islands	Cayman Islands Monetary Authority ("CIMA")	Issued a statement that Binance, the Binance Group and Binance Holdings Limited are not registered, licensed, regulated or otherwise authorised to operate a cryptocurrency exchange from or within the Cayman Islands ⁵ . CIMA is currently investigating whether Binance, the Binance Group, Binance Holdings Limited or any other company affiliated with the group of companies has activities operating in or from within the Cayman Islands which may fall within the scope of CIMA's regulatory oversight ⁶ .
2 July 2021	Thailand	Securities and Exchange	Filed a criminal complaint against Binance with the Economic Crime Suppression Division of the Royal Thai Police for committing an offence

³ https://www.fsa.go.jp/policy/virtual_currency02/Binance2_keikokushilyo.pdf

⁴ <https://www.fca.org.uk/news/news-stories/consumer-warning-binance-markets-limited-and-binance-group>

⁵ <https://www.cima.ky/binance-not-regulated-by-cima>

⁶ *ibid*

		Commission, Thailand	under the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) for operating a digital asset business in Thailand without a licence ⁷ .
8 July 2021	Poland	Polish Financial Supervision Authority (" PFSA ")	Issued a statement on Binance's growing regulatory issues around the world, stressing that the cryptocurrency market is neither regulated nor subject to the supervision of the PFSA ⁸ .
15 July 2021	Italy	Italian Companies and Exchange Commission	Issued a statement that Binance group is not authorised to provide investments services and activities in Italy ⁹ .

(2) SC REGISTERS NEW DAX OPERATOR

The SC has updated the list of registered DAX operators on 29 July 2021 to include MX Global Sdn Bhd ("**MX Global**") as the fourth registered DAX operator in Malaysia, joining Luno Malaysia Sdn Bhd, Tokenize Technology (M) Sdn Bhd and SINEGY Technologies (M) Sdn Bhd¹⁰.

MX Global was previously listed as one of the DAX not permitted to continue operations with effect from 1 June 2019¹¹. The registration of MX Global as a DAX operator with the SC thus presents a welcome change and a degree of comfort for its users who will now be afforded with protection under the securities laws of Malaysia.

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

⁷ https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=9017

⁸ https://www.knf.gov.pl/komunikacja/komunikaty?articleId=74107&p_id=18

⁹ https://www.consob.it/web/consob/dettaglio-news/-/asset_publisher/hZ774IBO5XPe/content/avviso-a-tutela-dei-risparmatori-sul-gruppo-binance-15-luglio-2021-/10194

¹⁰ <https://www.sc.com.my/regulation/guidelines/recognizedmarkets/list-of-registered-digital-asset-exchanges>

¹¹ *ibid*

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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