

## **Fintech Series**

### **Guidance Notes**

# **Regulatory Treatment of Non-Fungible Tokens**

Issued under section 7(1)(a) of the Financial Services Act

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## **1. Background**

- 1.1 Non-Fungible Tokens (“NFTs”) have attracted significant interest from industry players and policymakers / regulators worldwide.
  
- 1.2 A NFT is a token recorded using distributed ledger technology (such as Blockchain), whereby each NFT recorded is distinguishable from any other NFT. This allows each

NFT to be given unique features and to be associated with a distinct physical or virtual asset. NFTs are often linked to items such as artworks, music or videos.

1.3 Following the enactment of the Virtual Asset and Initial Token Offerings Services Act (“VAITOS Act”), the Financial Services Commission, Mauritius (“FSC”), as the integrated regulator for the non-banking financial services and global business sectors, has deemed it necessary, through these Guidance Notes, to clarify the regulatory stance that will be adopted with respect to NFTs.

1.4 These Guidance Notes neither derogate nor restrict the powers vested upon the FSC by statutes, and should be read together with the Relevant Acts<sup>1</sup>, other applicable Acts<sup>2</sup>, as well as other guidelines and circulars issued by the FSC.

1.5 Any non-observance of these Guidance Notes may entail regulatory actions.

1.6 Where the FSC has directed any person to comply with the Guidance Notes, non-compliance with such direction may constitute an offence.

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<sup>1</sup> As defined under section 2 of the Financial Services Act.

<sup>2</sup> As defined under section 2 of the VAITOS Act.

## 2. Regulatory Treatment of NFTs

2.1 NFTs may take different forms and therefore warrant different regulatory treatments, as described in the following scenarios:

### **Scenario 1: NFTs as digital representation of collectibles but not used for payment or investment purposes**

NFTs may be issued and marketed to the general public as a unique digital collectible that may be linked to an underlying asset. Where a NFT is deemed as a genuine digital collectible and not used for payment or investment purposes, the activities associated with the NFT shall not fall under the regulatory purview of the FSC, i.e. under the Relevant Acts.

### **Scenario 2: NFTs displaying characteristics of securities**

Where the NFTs have overlapping characteristics of a digital collectible and a transferable financial asset, such as fractional NFTs<sup>3</sup>, the NFTs shall be considered as “securities” as defined in the [Securities Act](#).

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<sup>3</sup> Where fractional NFTs allow numerous purchasers to acquire a partial ownership or interest in an underlying financial asset or in a collective investment scheme.

Accordingly, whenever a NFT constitutes a share or an interest in a collective investment scheme<sup>4</sup>, its marketing or distribution to the general public shall constitute a regulated business activity, in accordance with the provisions of the [Securities Act](#) and the [Securities \(Collective Investment Schemes and Closed-end Funds\) Regulations 2008](#) respectively. Any person who conducts such regulated business activity, whether in Mauritius or targeting Mauritian residents, shall accordingly be required to have an appropriate licence issued by the FSC under these legislations.

In addition, if a NFT falls under the category of “securities”, any platform facilitating the sale and secondary trading of the NFT is required to be licensed by the FSC as a securities exchange or securities trading system, as the case may be, under the Securities Act.

### **Scenario 3: Other NFTs**

Any person who intends to:

- (i) issue NFTs which fall under the category of virtual assets (i.e. those which are not digital collectibles and are not securities), shall apply for registration under section 24 of the VAITOS Act;

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<sup>4</sup> As defined under regulation 2 of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008.

- (ii) administer, hold, transfer or exchange NFTs which fall under the category of virtual assets (i.e. those which are not digital collectibles and are not securities), shall apply for the relevant licence in accordance with section 8 of the VAITOS Act.

### **3. Note of Caution**

- 3.1 The FSC wishes to caution prospective investors and the general public about the risks associated with NFTs. NFT holders may be exposed to significant risks, including illiquid secondary markets, volatility, opaque pricing, hacking and fraud.
- 3.2 Investors, who are not sufficiently knowledgeable in virtual assets, should be cautious and avoid investing in NFTs if they cannot fully understand the potential risks and losses.
- 3.3 These Guidance Notes should not be construed as legal, financial or other professional advice. Investors are encouraged to seek their own advice prior to investing in NFTs.

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