

How legal are NFTs (Non-Fungible Token) in Singapore?

~ Comparison with Japanese laws ~

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There has been an increasing popularity of NFTs (Non-Fungible Tokens). NFTs are a kind of digital assets and are becoming popular as a way to buy and sell digital artwork. This article explains how NFTs are treated under Singapore laws with comparison to Japanese laws.

1. What are NFTs?

NFTs are cryptographic tokens on a blockchain. As the term “non-fungible” says, no two NFTs are the same and each NFT is assigned a unique identification code and metadata. In contrast, cash and bitcoins are “fungible” and can be exchanged. What makes NFTs unique is the fact that it can prove authenticity and ownership of digital asset, and NFTs thus can be considered as digital data with a certificate of ownership.



For example, while it may be possible to view and copy a digital artwork from the internet, it is difficult to claim ownership of the artwork. On the other hand, an owner of an NFT linked to a digital artwork can prove their ownership and claim to be the owner of the work. They can also sell it as a unique work to a third party.

The reason behind the increasing popularity of NFTs is the possibility that NFTs can help artists monetise their digital art. Unlike physical artwork, digital art can be easily replicated and many artists suffer from losses due to illegal replication. NFTs can mitigate these losses and provide a way for artists to monetise their original digital artwork.

2. How legal are NFTs in Singapore?

Although there are examples where Singaporean artists have sold NFT artwork, creating and buying/selling NFTs are not specifically regulated under the Singapore laws and considered a grey zone. Unlike currency notes and coins issued by Monetary Authority of Singapore (MAS), NFTs are not considered as legal tender in Singapore and not regulated by MAS.

In Singapore, the Payment Services Act (PSA) was enacted to regulate cryptocurrency service providers and digital payment tokens in January 2020. However, it is generally considered that PSA does not apply to NFTs because (1) NFTs may fall under the “limited purpose digital payment tokens”, which are exempted from the PSA and (2) NFTs are not an accepted method of payment for goods and services, and thus they are likely not fall under the scope of “digital payment tokens” under the PSA.

Even if the NFTs is regulated by the PSA, the chief aim of the regulations is to detect money laundering and prevent terrorism financing. Thus, the extent of regulation of NFTs in Singapore remains unclear.

Under Japanese law, according to the paragraph I-1-1(3) of the Financial Services Agency's "Guidelines for Administrative Processes: Financial Companies No16", one of the factors to determine if a crypto asset falls under Article 2, paragraph 5 (ii) of the Payment Services Act is whether it has financial functions equivalent to crypto assets which falls under Article 2, paragraph 5 (i) of the Act. NFTs, which are unique and non-fungible, has a characteristic as digital "things" and do not have such financial function and thus not considered as a crypto asset described in either (i) or (ii).

3. Ownership of NFT buyer

Under Singapore law, the purchase of an NFT generally grants rights similar to ownership of the NFT (depending on the content of smart contract etc). The buyer should also check the terms and conditions applicable to the NFT contained in smart contracts. Smart contracts are embedded into NFTs on the blockchain and set terms and conditions, such as how much the original artist will get from secondary sales of the NFT. Singapore is a common law jurisdiction, and the content of the contract between the parties is important when making a purchase. Therefore, it is important to understand not only the terms and conditions of the transfer, but also the smart contract embedded into the NTF on the blockchain.

Under Japanese law, the term "things" (Article 206 of the Civil Code), which is the object of ownership under the Civil Code, means "tangible objects" (Article 85 of the Civil Code). Also, the ruling of the Tokyo District Court on August 5, 2015 ruled that bitcoin cannot be the object of ownership because it is not tangible. NFTs, like Bitcoin and other cryptographic assets, are only issued as digital tokens on the blockchain and exist as data, and do not fall under the scope of "things" under the Civil Code because they are not tangible. Thus, under Japanese law, ownership of NFTs may not be conceived.

4. Transfer of NFTs

In Singapore, the transfer of NFTs should be performed with a written contract. Also, in some platforms, payments can be made only after a NFT is delivered to ensure that a NFT is delivered to the buyer.

If there is a written contract between a creator/seller and a buyer, it is possible to file a lawsuit for breach of contract. However, it should be noted that it may be difficult to locate the seller and the litigation process may be complicated if the seller is not located in Singapore.

In the absence of a contract, there is no legal recourse for the purchaser in Singapore as the laws and regulations applicable to blockchain transactions are unclear.

5. What happens if the digital artwork linked to the NFT is destroyed?

Although NFTs include information on the location of the digital asset, this does not mean that the buyer owns the actual asset. It is possible for the original digital artwork to be deleted, or for the server hosting it to go down, resulting in the buyer losing the work.

To avoid such problems, some NFTs have an InterPlanetary File System that uses multiple hosts rather than a single domain owner. Another solution for this is to conclude a traditional written contract, but where the situation is not covered under the contract (such as if the seller is not

legally responsible for the NFT being destroyed or if the buyer is unable to locate the digital asset), the buyer may be left with no legal recourse.

Conclusion

NFTs will likely continue to grow its popularity in Singapore. If you buy NFTs, it is important to be mindful of the possible legal issues and enter into a binding written contract. If you need legal advice about NFTs, it is recommended that you consult a fintech lawyer who is experienced in the area of digital asset exchanges and blockchain.



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After working at a leading law firm in Japan, Tetsuo joined one of Singapore's top law firms as a partner. He then became the head of Asian operations of an international law firm. Since the establishment of One Asia Lawyers Group in July 2016, he has provided legal advice on various cross-border legal transactions, including M&A and international trade disputes. In 2014, he became the first qualified Japanese lawyer to advise Singapore commercial law (Foreign Practitioner certificate for Foreign Lawyer to Practise both Singapore Law and Foreign Law in Singapore (Section 36B)).

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