NFT

This section provides a general explanation of innovative technological trends (DAO, DeFI, NFT, tokens, etc.) that may be related to the provision of financial services or similar activities.

This information does not constitute legal advice or an explanation. We recommend that related parties assess and legally qualify their activities in advance, if necessary, with the help of a professional legal adviser. Consumers of innovative solutions are advised to assess the risks they may be exposed to when using their financial means.
We also recommend that you consult the draft EU Regulation on Markets in Crypto-assets (MiCA) and related proposals.

NFT (non-fungible token), or non-assignable asset, is a type of virtual currency that represents (nowadays generally digital) assets. All NFT data is stored in the blockchain through smart contracts. An NFT is a block of data that refers to the location and ownership of the underlying digital asset or, in the event of a real-world object, ownership. This means that NFT is not an asset in itself. As each NFT indicating ownership of an original item is unique, and because of the occasional high demand from gamers, collectors, and investors, the price of some NFTs is very high. Due to their uniqueness, NFTs are not traded in the traditional way, where a fixed buy and sell price is agreed upon, but generally change hands following auctions or transactions agreed upon between two parties, making NFTs a low-liquid asset.

NFTs can be any unique digital data item, from collectible sports cards to virtual real estate or digital fashion design. In addition to digital art, blockchain-based games, and collectables, NFTs could potentially be applied in other areas of activity, such as supply chain management, intellectual property and patents, medical data and identity recognition. In the future, NFTs may also be used to represent the ownership of physical assets, such as real estate or vehicles.

What is the legal definition of trading in NFTs?

The Law of Obligations Act predominantly applies to transfer transactions of NFTs as non-financial assets. However, it is not excluded that the regulation of virtual currencies is also applicable, in particular when transactions involving NFTs are carried out in cryptocurrencies. In addition, the NFT relates to the virtual currency wallet service and the applicable regulation. When performing transactions with NFTs, it is therefore also necessary to analyse the possible need for a licence of a virtual currency service provider and to consult the Financial Intelligence Unit on this issue.
In certain cases, NFTs may qualify as securities, which would make them subject to the Securities Market Act. One example of a case where the possible designation of an NFT as a security needs to be analysed is where the acquisition of an NFT confers on the investor other rights in addition to the ownership of the underlying assets, such as an expectation of income in a company related to the issuer of the NFT. There has also been a proliferation of fractionalized NFTs (F-NFTs), which are not

a unique and irreplaceable NFTs, but pieces of its ownership. In this case, as they are standardised, i.e. similar, interchangeable instruments giving the right to ownership of something, F-NFTs may also fall under the definition of a security for the purposes of the Securities Market Act.

What to consider when trading with NFTs?

Fraud – NFT is a reference to the underlying asset, not the asset itself. Therefore, while it is impossible to forge an NFT itself, it is possible to create an NFT for any work of art or document by anyone who has access to it. That is why fraudsters often sell copies of well-known NFT artworks, for example, claiming they are the originals. However, as it is not an NFT of the author's own creation, it does not confer ownership rights on the purchaser. For this reason, when purchasing an NFT, it is always important to verify that it is the original that is being purchased, unless one originally intends to purchase a copy.

In the context of NFTs, there are also often schemes to artificially inflate the price, where its creator buys and sells it for an ever higher amount between several users they own in order to show its value as higher than the real one. The risk of falling victim to this scheme is higher for traders new to NFTs, since they may not be aware of the warning signs.
Cyber risks – Although transactions with NFTs are logged on the blockchain and are immutable, they are also subject to risks inherent to both blockchain-based technologies and the virtual world in general. For example, attackers can steal NFTs by exploiting flaws in the underlying 'smart contracts'. It is also possible for a hacker to access and steal a virtual wallet in which a person stores NFTs. However, due to the anonymity and irreversibility of the blockchain, it is essentially impossible to recover them or prosecute the attacker.

Since the NFT is not a digital or physical object, but merely a reference to an object, it must be understood that while the NFT itself is not modifiable, its underlying assets may be. The locations of the underlying digital assets of the NFT are mostly administered by centrally managed third parties. For example, if the underlying NFT is hosted on an untrustworthy website, and the NFT itself is just a web address leading to it, there is a risk that the website operator will remove or modify the underlying asset; the site will be attacked and the underlying asset will be modified; or the site will cease to exist altogether. It is therefore important to ensure that the underlying assets are secure before purchasing an NFT.

Volatility of value – It must be understood that, as with art, the value of most NFTs (which have no real underlying asset such as a real estate or an event ticket) is entirely subjective. As a result, their market is highly volatile and their price depends to a large extent on the sentiment of market participants. Thus, during the so-called NFT boom of 2021, the prices of tokens that are no longer of much value rose.

Low-liquidity assets – Unlike currencies and shares, and like works of art, each NFT is unique. Therefore, if one wants to sell it, they need to find a buyer who is confident that it will meet their requirements. Consequently, the liquidity of this asset is quite low and it may take some time to realise the asset, which is why it is important to carefully consider how much liquidity risk to take before investing in an NFT.

NFT is a right of ownership – In accordance with subsection 16 (1) of the Copyright Act, the copyright in a work belongs to the author of the work or their successor, regardless of who owns the right of ownership of the work. Therefore, for example, the author of a work of art sold as an NFT is free to make copies and derivative works of it as they see fit. The author also retains the right to receive remuneration on each sale of the work.

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