

## The Metaverse – Malaysian Legislative Framework and Key Legal Challenges

### What is the 'Metaverse'?

The term "Metaverse" refers to a collective virtual shared place that people from all over the world may join and explore. It is made up of a network of many three-dimensional virtual spaces or worlds. Users can communicate with other people by using digital avatars.

While the Metaverse can be seen as a natural evolution of information technology and information communication technology, it also presents a whole new level of opportunity for creative content to further its potential and it also opens up the space for all segments of creative content to collaborate with these technologies.

### Malaysian Legislative Framework

In Malaysia, there is currently no direct regulatory structure that governs the Metaverse due to the Metaverse's infancy. The technologies used for the operation of the Metaverse and the various functionalities that result from them would determine the applicable laws that govern the specific activities carried out via the Metaverse.

The following are the key Malaysian statutes and codes that may apply to the Metaverse:-

#### 1. Personal Data Protection Act 2010 ("PDPA")

The PDPA and its subsidiary regulations govern the processing of personal data in business transactions and apply to everyone who processes, regulates, or authorises the processing of personal data in commercial transactions.

The PDPA provides seven principles ("**PDP Principles**") that data users (who are different from data processors under the PDPA) must adhere to when processing personal data.

If you have any related questions/queries please do not hesitate to contact us:

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- General Principle – unless specifically exempted under the PDPA, consent must be obtained before processing a data subject's personal data. Processing of personal data must be for lawful purposes directly connected to or necessary for the data user's intended activity and adequate and not excessive for the relevant processing purpose. Data processors must obtain the explicit written consent of data subjects before their sensitive personal data can be processed.
- Notice and Choice Principle – data users must ensure that written privacy notices containing relevant details required by the PDPA are available to the data subjects. To assist data users in the preparation of privacy notices, the Personal Data Protection Commissioner published a Guide to Prepare Personal Data Protection Notices in January 2022 which sets out certain compulsory elements to be included in privacy notices.
- Disclosure Principle – it is illegal to disclose any personal data without the data subject's consent unless otherwise specified in the data user's privacy notice, and to such parties identified in the data user's privacy notice, or as exempted under the PDPA.
- Security Principle – data users must take reasonable precautions to protect personal data from loss, misuse, modification, unauthorised/accidental access or disclosure, alteration or destruction.
- Retention Principle – personal data may only be retained by data users for as long as is required to fulfil the purpose of processing and must thereafter delete the personal data.
- Data Integrity Principle – reasonable efforts must be taken by data users to ensure that the personal data is accurate, complete, not misleading, and up to date.
- Access Principle – data subjects have the right to request access to their personal data and to correct any inaccurate, incomplete, misleading, or outdated personal data.

Data users are not allowed to transmit personal data out of the country unless such personal data is sent to an authorised place (although such authorised places are yet to be verified, a proposed list has been issued) or falls under any other exceptions under the PDPA.

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Data users must take reasonable steps to implement adequate security and indemnity measures in order to prevent theft, loss, misuse, unauthorised/accidental access or disclosure, alteration, or destruction of personal data. Data users must also ensure that any associated data processors offer adequate guarantees to the same.

Compliance with the PDPA is mandatory when a person is locally established and processes personal data (directly or indirectly), or when a person is not locally established but utilises locally-based equipment to process personal data (other than for transit reasons). Due to the "establishment" and "transit" conditions mentioned above, there may be difficulties in applying the PDPA to global data users given the Metaverse's worldwide scope.

## 2. Contracts Act 1950 ("CA")

According to the CA, all agreements are considered contracts if they are entered into with the free consent of contracting parties, have a legal consideration and purpose, and are not expressly declared invalid.

When the elements of the formation of contracts—namely, offer, acceptance, consideration, and intention to create legal relations — are satisfied, a contract is said to have been formed under the CA. The formation of contracts does not have any specific documentary requirements.

Smart contracts and other Metaverse-based contracts may potentially be enforceable under the CA given the advent of blockchain technology and the adoption of smart contracts for transactions within the Metaverse, provided that the elements for the formation of contracts are met and there are no vitiating factors (such as coercion, misrepresentation, undue influence, illegality, or fraud) that would render the contracts void or voidable.

## 3. Electronic Commerce Act 2006 ("ECA")

The ECA acknowledges that contracts may be formed by exchanging information through "electronic messages" which is widely defined under the ECA and may include information sent through the Metaverse. Such contracts may be legally binding and enforceable against the contractual parties.

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#### 4. Content Code 2022 (“Content Code”)

The Communications and Multimedia Content Forum, established by the Malaysian Communications and Multimedia Commission (“MCMC”), developed the Content Code to identify objectionable content and establish content requirements based on regional social, cultural, and religious values. The Content Code also aims to protect consumers by regulating advertising, including claims made in online advertisements, endorsements, and pricing information. Given the prominence of content in the Metaverse, users who publish content in the Metaverse may need to adhere to the Content Code.

Content that may offend any group is prohibited under the Content Code, and important information must be provided without deception. The Content Code also addresses sensitive topics such as suicide reports, the rights of children, the rights of the disabled, and advertisements by businesses in the gaming and betting industry.

The Content Code recognizes the term "virtual influencers" as computer-generated characters or avatars with realistic features, traits, and personalities who behave like real-life influencers. To prevent deceiving clients, those who operate as virtual influencers must disclose paid advertisements.

The MCMC has jurisdiction over individuals and entities based in Malaysia but has limited power to prosecute international offenders. It can only prevent Malaysians from accessing objectionable information created by offenders located outside of Malaysia. Non-compliance with an instruction of the MCMC to adhere to the Content Code could render the offender liable to a fine of up to MYR200,000.

### **Key Legal Challenges**

#### 1. Jurisdiction

Presently, there are no legislative provisions that address cross-border jurisdictional issues concerning the Metaverse. Access to the Metaverse would generally be regulated by terms of use and/or end-user licence agreements (collectively “EULAs”) between end users and the platform operators that give access to it. In such instances, the governing law of the EULAs could ascertain applicable jurisdiction vis-à-vis the conduct of end-users in relation to the EULAs.

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In-Metaverse jurisdiction is a grey area. Arguably, if there are contractual terms and conditions within the Metaverse which stipulate the governing law of a particular real-world territory, then the applicable courts may apply relevant real-world laws in relation to contractual issues pertaining to the same.

Where cyber crimes are concerned, it remains to be seen whether any real-world prosecution and enforcement may be commenced and sustained. The legislative framework for cyber crimes is mainly governed by the Computer Crimes Act 1997 (“CCA”) and supplemented by other legislation. The CCA has effect within and outside the country, regardless of the nationality or citizenship of the offenders. However, the CCA has yet to be revised to consider the rapid development of the Metaverse and ancillary legal issues.

## 2. Data protection

Data protection is a primary concern for Metaverse users. Companies that run the Metaverse can take advantage of augmented reality/virtual reality technology and gadgets that gather a vast amount of data, including a wide variety of personal data. Due to the nature, volume, and sensitivity of the information collected, this might result in unique data privacy issues for users. These various categories of data might be misused by data users or other parties.

## 3. Anti-money laundering

Non-Fungible Tokens (“NFTs”) and cryptocurrencies are frequently used as a form of consideration for in-Metaverse transactions. NFTs are digital assets that come in various forms with unique identifiers that can be traded and sold. NFTs may potentially fall under the jurisdiction of the Securities Commission (“SC”) and be subject to the controls of Anti-Money Laundering/Counter-Financing of Terrorism (AMLCFT) following the SC’s release of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (Prescription Order) and the Guidelines on Recognized Markets 2019 (GRM). The layers of identity protection and anonymity afforded to users in the Metaverse, however, make it difficult to enforce AMLCFT oversight over transactions within the Metaverse. As a result, institutions with AMLCFT reporting obligations are unable to effectively police transactions within the Metaverse.

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#### 4. Intellectual property (“IP”)

There are various possible IP issues, such as copyright infringement, trademark infringement, and patent infringement that may arise in the Metaverse. However, due to the anonymity of persons in the Metaverse, infringers may be difficult to identify and punish.

In addition, there may be problems with counterfeit NFTs, patent infringement in technology development, and trade secret misappropriation.

Virtual transactions may also include a risk of trademark infringement, which can be mitigated by proactive trademark registration.

Enforcement is challenging since the Metaverse consists of interconnected online networks and services that might have host servers located outside the country where the infringement occurs. The variations in laws and customs among several jurisdictions might make this situation much more difficult. For instance, in some jurisdictions, such as Malaysia, court injunctions are more frequently adopted for IP enforcement, whilst in others, administrative processes may be required.

There is a lot of awareness and interest in the Metaverse and the consumer and business potential generated by it in terms of economic and social activities. Individuals, businesses and governments alike have all been caught up in the wonder of it (in some way, shape or form) and find themselves exploring it or experimenting with it.

To this end, it also presents a good opportunity for existing legislation to be assessed on its agility to address these developments and for the creation of new legislation to address new developments more appropriately. It is these experiences that will contribute to the development of the Malaysian legal framework.

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