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### Luno: First Crypto Dispute in Malaysia

Cryptocurrency is widely regarded as a game changer in the financial world, with the clear potential to reinvent the global system of transactions. Since the launch of bitcoin in 2009, cryptocurrencies such as Litecoin, Ethereum, Ripple and Zcash have been introduced and are now accepted in a wide variety of transactions in the online commercial marketplace. Crucially, the growing prominence of cryptocurrency in both the digital and financial realms has sparked a corresponding increase in the number of cryptocurrency-related lawsuits filed around the world.

The first ever cryptocurrency dispute to land in the Malaysian courts is the case of *Robert Ong Thien Cheng v Luno Pte Ltd & Anor*, which was decided by the High Court (on appeal) in August 2019. The facts of this case are rather straightforward.

Luno Malaysia Sdn Bhd (**Luno**) is a digital assets exchange platform registered with the Securities Commission. On 1 November 2017, Luno mistakenly transferred 11.3 bitcoins to a customer's e-wallet account, which at the time was registered with another cryptocurrency exchange platform. The erroneous transfer was said to be caused by a technical glitch. About a month after the incident, the customer (**Ong**) offered to pay Luno a sum of RM300,000, an amount equivalent to the value of the 11.3 bitcoins as at the day of the erroneous transfer. However, Luno refused to accept Ong's offer because by then, the value of the bitcoin had increased and now significantly exceeded RM300,000. Luno subsequently sued Ong to recover the 11.3 bitcoins or its equivalent value of RM810,837 as at the time of filing the legal action. The Sessions Court held in favour of Luno and Ong subsequently appealed against the decision.

The crux of the appeal turned on the interpretation of s 73 of the Contracts Act 1950 (**the Act**), which provides that "a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it". The question, therefore,

is whether the term “anything” in s 73 can be construed to include cryptocurrency. In answering this question, the High Court held that the trading of cryptocurrency is legal in Malaysia pursuant to the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019, and is defined under the Order as a form of “security”. In this regard, cryptocurrency is a form of “commodity” as real money is used to purchase it. There is value attached to cryptocurrency in the same way as value is attached to shares. It was also held that the Act, having been drafted some seven decades ago, ought to be construed in a manner which reflects recent changes in modern technology and commerce. Accordingly, the court held that the term “anything” in s 73 of the Act is wide enough to cover bitcoins, and ordered that the 11.3 bitcoins be returned to Luno.

Recent statistics have shown that cryptocurrency trading in Malaysia has surged amid the extended Movement Control Order. As domestic cryptocurrency trading continues to gain traction, this will inevitably result in an increase in cryptocurrency-related lawsuits. It should, however, be noted that notwithstanding the decision above, such disputes remain relatively uncharted territory in Malaysia and the way forward continues to be uncertain. Anyone who intends to invest in or transact with cryptocurrency is hence advised to do so with caution.

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