EVOLUTION OF THE ICO: A SINGAPORE PERSPECTIVE

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Technology companies have come up with many innovative ways of to raise funds for their digital related projects. One such way would be to carry out an Initial Coin Offering ("ICO"). An ICO is a fundraising method in which a company with a native digital token to be used in relation to an underlying project would raise funds by launching a token offering of its native token.
You may wish to refer to our article on the mechanics and components of an ICO here.

Initial Coin Offering ("ICO")

The ICO entered public consciousness in 2017 when cryptocurrencies were experiencing massive growth but the roots of ICOs may be traced to about nine years back and have their origins in crowdfunding. Simply put, ICOs are a type of crowdfunding and examples abound, like Kickstarter campaigns but instead of selling t-shirts, backpacks and other products for credit card payments, ICO projects sell their product through their native token. Apart from a landmark ICO conducted in July 2014 by the Mastercoin project (OMNI), there have been a myriad of successive cryptocurrency projects. The OMNI ICO raised 4740 Bitcoins to be used as funds to build the OMNI platform which would be about US$190 million at the time of this article. In 2014, Ethereum relied on an ICO raise of about US$18 million for their Ethereum project.

ICOs were seen and are (to a lesser degree today) perceived as a relatively efficient way to raise funds as it did not require having to jump through the regulatory hoops, involve extensive KYC, AML and due diligence process that would be required for an Initial Public Offering. Many entrepreneurs adopted the then new and unregulated form of "fundraising" as an expedient means to obtain funds for their projects.

The Securities and Futures Act 2001

The Monetary Authority of Singapore (the "MAS") published "A Guide To Digital Token Offerings" updated on 26 May 2020 (the "Guide"), which set out guidance on the regulatory approach towards ICOs, including stating that the MAS would "examine the structure and characteristics of, including the rights attached to, a digital token in determining if the digital token is a type of capital markets products under the SFA" (SFA being the Securities and Futures Act 2001). The Guide also mentioned that "Under section 2(1) of the SFA, "capital markets products" includes any securities (which includes shares, debentures and units in a business trust), units in a collective investment scheme, derivatives contracts (which includes derivatives of shares, debentures and units in a business trust), spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as MAS may prescribe as capital markets products". Thus, an offering of tokens regarded as "capital market products" or "securities" would be classified as "Security Token Offerings" ("STOs"), which would be regulated under the SFA.
The first known attempt of a company conducting a STO would be Filecoin (FIL). The STO was carried out on CoinList which holds various licences granted by the regulatory authorities under the U.S Securities and Exchange Commission in the United States of America. By entering into an agreement called a Simple Agreement for Future Tokens (a "SAFT"), FIL raised US$257 million from accredited investors alone. These investors were given FIL tokens that are proportionate to their equity investments.

You may wish to refer to our article on STOs here.

Under the SFA, tokens that are regarded as "securities" or "capital markets product" would potentially oblige the ICO issuer to comply with requirements for an offering of securities and a prospectus may be required for any offer of securities that is not an excluded or exempted offer under the SFA.

The Payment Services Act 2019 (the "PS Act") and the regulation of digital payment token service providers

The PS Act came into effect on 28 January 2020. Under the PS Act, providers of digital payment token services and digital payment token exchange services will be required to apply for a payment institution licence (standard payment institution licence or a major payment institution licence) and will be regulated for anti-money laundering ("AML") and counter financing of terrorism ("CFT") purposes. They will also be required to put in place policies, procedures and controls to address money laundering and terrorism financing risks.

You may wish to refer to our article on the PS Act here.

Initial Exchange Offering ("IEO")

On January 2019, Binance Launchpad conducted the first Initial Exchange Offering (the "IEO") by launching the BitTorrent Token (BTT). The BTT IEO sold out within 15 minutes of release and raised more than US$7.1 million.

An IEO is when a company places its native token on a cryptocurrency exchange platform that will list and sell the tokens through its platform. The exchange platforms will assist and will be liable to oversee the token offering by scrutinising and carrying out their due diligence by performing several assessments of each project's token. As a pre-condition of allowing a company to place or list its native tokens on the exchange, the exchange operator invariably requires a legal opinion from a lawyer qualified in the jurisdiction in which the IEO will be carried out.

An IEO allows a company to leverage on the reputation, market reach and network of an exchange platform.

The Golden Age of the ICO, DeFi, DAO and the Initial DEX Offering ("IDO")

Along with the increasing popularity of Decentralised Finance ("DeFi") and Decentralised Autonomous Organisations (commonly referred to as "DAOs"), decentralised exchanges ("DEX") came into being. In 2016, the DAO was built. This project was based on Ethereum. DAO was conceived and built as a decentralized funding model through which participants could pitch projects to various investors and disperse funds with the anticipation that they would gain a significant upside when the underlying project becomes successful.

DEX is a peer-to-peer platform whereby financial transactions of tokens listed will not be facilitated or officiated by banks or other financial institutions and are built on open-source code, this means that developers are able to see how the DEX works. Popular DEXs include Uniswap and Sushiswap.

A tangible benefit of an IDO is that each participant can rely on a trusted DEX platform, instead of the project's own platform. IDOs also benefit smaller projects as it would be cheaper to carry out a token offering by way of an IDO instead of on a larger, centralised exchange.

However, as there is little or no KYC or AML requirements for a project to list their token on a DEX, projects should be aware that carrying out an IDO without proper legal advice may result in an unintended STO, and without obtaining the proper licences first, the owners of the project may face criminal and civil sanctions.

Initial NFT Offerings ("INO")

With the recent hype for non-fungible tokens ("NFTs"), there has been a further evolution of token offerings but with a focus in the NFT space, referred to as an Initial NFT Offering ("INO"). You may wish to refer to our article on NFTs titled "Non-fungible tokens ("NFTs"): developments and legal issues" for more details.
INOs involves offering a set of limited edition NFTs via a NFT platform. The funds provided by INO participants will help the owners of NFT projects obtain funding to realise their projects.

Conclusion

The sheer amount of funds raised by the abovementioned forms of token offering has resulted in the digital token industry receiving abundant media attention over the last five years, covering the various types of digital token fund raising methods. On 28 October 2021, Facebook's announcement of its change of name to “Meta” created a new wave of interest and attention to the digital token industry, and specifically, in the metaverse, and we are excited to see how this growing interest in the metaverse may result in the confluence of previous, existing and future (including “virtual”) fund raising methods, the emergence of new digital token and cryptocurrency products as well as how the various streams of digital innovation may inter-operate into a digital and virtual multi-verse.