MAS ISSUES UPDATE TO GUIDE TO DIGITAL TOKEN OFFERINGS

Posted on December 5, 2018

Category: CNPupdates

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.



Date Published: 5 December 2018

Authors and Contributors: Quek Li Fei, Mike Chiam, Samuel Ling, and **Adrian Toh**.

On 30 November 2018, the Monetary Authority of Singapore ("**MAS**") issued an updated Guide to Digital Token Offerings (the "2018 Guide"). You may access the 2018 Guide on the MAS website (link).

In this article, we provide a summary of the key changes to the 2018 Guide. For more information on the other provisions in the 2018 Guide, you may refer to our previous article on the earlier and original version of the 2018 Guide (issued by MAS on 14 November 2017) which is accessible here.

Key take-away: It is important to note that MAS has expressly stated that digital token issuers and their legal advisers should look beyond labels and examine the features and characteristics of each token. To this end, it is noted that MAS has also stated that the illustrations in the case studies are not exhaustive and "deliberately avoid labeling using terms like "utility token" or "stablecoin".

New Licensing Regime proposed under the Payment Services Bill

In the 2018 Guide, MAS highlighted that the Payment Services Bill, when it comes into effect, will put in place a licensing regime requiring persons carrying on businesses of providing services of dealing in digital payment tokens or facilitating the exchange of digital payment tokens (such as cryptocurrency exchanges) to apply for a major payment institution licence or a standard payment institution licence, under which such licensee will be regulated for anti-money laundering ("**AML**") and counter financing of terrorism ("**CFT**")

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

purposes only. As also stated in the original guide issued on 14 November 2017, licensees will be required to put in place policies, procedures and controls to address money laundering ("**ML**") and terrorism financing ("**TF**") risks. The Payment Services Bill has been read in Parliament for the first time on 19 November 2018.

The 2018 Guide now includes new illustrations where the licensing regime under the Payment Services Act may affect issuers of digital payment tokens ("Issuers") or operators of digital token exchanges ("**Exchanges**"). Also included in the 2018 Guide are additional or expanded illustrations of how securities laws administered by MAS may apply to some digital tokens, Issuers or Exchanges (11 case studies). Kindly note that as stated in the 2018 Guide, the illustrations in the case studies are not exhaustive.

AML/CFT requirements imposed on intermediaries

Intermediaries such as capital markets services licensees and licensed financial advisers which facilitate offers or issues of digital tokens (regardless of whether they constitute capital markets products under the Securities and Futures Act (Cap. 289) ("**SFA**")) are now expressly required to take appropriate steps to identify, assess and understand their ML/TF risks, develop and implement policies, procedures and controls to enable them to effectively manage and mitigate the ML/TF risks identified, perform enhanced measures where higher ML/TF risks have been identified and monitor the implementation of these policies, procedures and controls.

Fintech Regulatory Sandbox Application

Firms looking to utilise innovative technology to provide financial services that are regulated by MAS may apply for admission to the regulatory sandbox. Contact us to know more about the evaluation criteria.

Writing to MAS

MAS has indicated that a token issuer should carefully read the 2018 Guide to evaluate if it's intended digital token offering or project will be required to comply with Singapore securities laws. MAS has also recommended that a token issuer planning a token issue should answer all the Critical Questions (in Appendix 1 to the 2018 Guide) before deciding whether or not it needs to write to MAS. The 2018 Guide also makes it clear that MAS will only engage token issuers (and review their lawyer's legal opinions) where the proposed token offering or proposed business model is not similar to any of the eleven case studies. The onus is thus on each potential token issuer and project entrepreneur to assess (with assistance and guidance from their qualified lawyer) as to whether it would be necessary to write to MAS before embarking on its token offering or project.

Should after going through the 2018 Guide and reviewing its answers to the Critical Questions, the potential token issuer and project entrepreneur believe that it is still necessary for them to write to MAS,

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

they may write to MAS enclosing all information required in the Checklist (in Appendix 2 to the 2018 Guide). In this regard, it is therefore critically important that a potential token issuer and project entrepreneur consult fully with their lawyers and obtain comprehensive professional advice on their planned token offering or project before approaching MAS and before launching their token offering or project.

The Checklist

In addition to the above, MAS has included a Checklist of initial information and documents which should be provided by a person intending to write to the MAS.
The Checklist includes requiring the provision of information on the offer (including the project and token name, company registration details and legal form; offering details such as the offering size, start and end date, and currencies accepted; documents such as the whitepaper, legal opinion from a Singapore-qualified lawyer, website and social media platform screenshot, KYC/AML policy (if any); and specific action(s) or clarification sought from MAS regarding application for licences, exemptions or waivers etc.).

Updates to Regulatory Requirements applicable to Offers of Digital Tokens

The regulatory requirements which apply to offerors of digital tokens which constitute "capital markets products" have also been updated to bring it in line with the recent amendments to the SFA which took effect on 8 October 2018, particularly with regard to the newly introduced authorisation or recognition requirements of collective investment schemes ("CIS") and the investment restrictions and business conduct requirements which apply to authorised CIS and recognised CIS.

The 2018 Guide has also provided helpful clarification (in Case Study 7) that the ability for a digital token to be traded on the secondary market alone does not result in a digital token being construed as capital markets products under the SFA.

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.