

# REGULATION OF ICOS IN SINGAPORE

*Posted on October 12, 2018*

Category: [CNPupdates](#)

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**Date Published: 12 October 2018**

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On 24 May 2018, the Monetary Authority of Singapore (“**MAS**”) issued a media release stating that it has issued warnings to 8 digital token exchanges and an initial coin offering (“**ICO**”) issuer not to offer or facilitate trading in digital tokens which constitute securities or futures contracts under the Securities and Futures Act (Cap. 289) (the “**SFA**”). This media release was significant in the context of Singapore’s growing popularity as an ICO jurisdiction of choice and doubtless, led to widespread interest amongst present and aspiring ICO issuers and digital token exchanges re-focusing on the legal and regulatory approach to regulating ICOs and digital token exchanges in Singapore. In this article, we will explore some key legal issues relevant to conducting an ICO in Singapore.

## **What is a “digital token”**

In Singapore, a “digital token” is considered to be “a cryptographically-secured representation of a token-holder's rights to receive a benefit or to perform specified functions”. Digital tokens may exhibit characteristics of certain instruments which are subject to regulation under Singapore law.

A digital token may constitute a share if it confers upon its holder or represents a legal or beneficial ownership interest in a corporation, or a debenture if it constitutes or evidences the indebtedness of its issuer. Digital tokens which constitute shares or debentures are securities under the SFA.

A digital token may constitute a unit of a collective investment scheme, which represents a right or interest,

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or an option to acquire a right or interest, in a collective investment scheme. Securities and units of a collective investment scheme are “capital markets products”, the offer of which is regulated under the SFA.

A digital token may also constitute a virtual currency if it is a digital representation of value that is not denominated in any fiat currency and is accepted by the public as a medium of exchange, to pay for goods or services, or discharge a debt. However, virtual currencies are not legal tender, as they are not issued by any government or backed by any asset or issuer.

It is important to note that a digital token may not always fall squarely within any one of the aforementioned categories. Digital tokens which are represented as “utility tokens” based on the clear and strong functionalities of the digital tokens may also exhibit characteristics of being securities, for example if they confer upon their token holders a right to dividends declared out of the profits of the token issuer company. If the “securities” characteristics of the digital tokens outweigh or are at least as prominent or important (in terms of being fundamental to the nature of a particular token and the key reason why someone would wish to purchase it) as the “utility” characteristics or functionalities, they may be subject to regulation under Singapore law as a “securities” token. MAS has also expressly recognised that the function of digital tokens has evolved beyond just being a virtual currency.

## Regulation of ICO issuers in Singapore

MAS does not regulate digital tokens per se unless they constitute capital markets products. Pursuant to the MAS’ Guide to Digital Token Offerings, any offer of digital tokens which constitute capital markets products will be required to comply with the SFA, including the registration of a prospectus with MAS, unless exempted. The current exemptions under the SFA apply, including a “small offer” (personal offer not exceeding \$5 million in any 12-month period); a private placement offer to a maximum 50 persons within any 12-month period; an offer to institutional investors only; and an offer to accredited investors. Also, as per the SFA, advertising restrictions apply except for an offer to institutional investors only.

Offers of units in a CIS are subject also to authorisation or recognition requirements and to compliance with investment restrictions and business conduct requirements set out in the SFA.

## Regulation of intermediaries who facilitate ICOs

MAS observed that one or more of the following types of intermediaries typically facilitate offers or issues of digital tokens:

- a person who operates a platform on which one or more offerors of digital tokens may make primary offers or issues of digital tokens (“**primary platform**”);
- a person who provides financial advice in respect of any digital tokens; and
- a person who operates a platform at which digital tokens are traded (“**trading platform**”).

A person who operates a primary platform in Singapore in relation to digital tokens which constitute capital

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markets products, may be carrying on business in one or more regulated activities under the SFA. Where the person is carrying on business in any regulated activity, or holds himself out as carrying on such business, he has to obtain a capital markets services licence for that regulated activity under the SFA, unless otherwise exempted.

A person who provides any financial advice in Singapore in respect of any digital token that is an investment product, must be authorised to do so in respect of that type of financial advisory service by a financial adviser's licence, or be an exempt financial adviser, under the Financial Advisers Act (Cap.110).

## Regulation of digital token exchanges who facilitate ICOs

Digital token exchanges, such as Coinbase and Binance, allow digital tokens to be exchanged with other digital tokens which are listed on these exchanges. A person who establishes or operates a trading platform in Singapore in relation to digital tokens which constitute capital markets products, may be establishing or operating a market and a person who establishes or operates a market, or holds himself out as operating a market, must be approved by MAS as an approved exchange or recognised by MAS as a recognised market operator ("**RMO**") under the SFA, unless otherwise exempted. To-date, there have been no digital token exchanges in Singapore which are approved by MAS as an approved exchange or recognised by MAS as an RMO.

Digital token exchanges that do not allow trading of any capital markets products regulated under the SFA are currently not subject to regulation. MAS' regulations do not extend to the safety and soundness of cryptocurrency intermediaries or the proper processing of cryptocurrency transactions.

MAS is currently exploring the possibility of expanding the existing category of RMOs to three (3) tiers in a consultation paper released on 22 May 2018 (viz. RMO Tier 1, RMO Tier 2 and RMO Tier 3) to better match regulatory requirements to the risks posed by different types of market operators. This may allow more digital token exchanges to be recognised by MAS as an RMO.

## Regulation of virtual currency service providers

While virtual currency service providers which facilitate the purchase and sale of virtual currencies are currently not regulated per se, MAS has tabled a draft Payment Services Bill for public consultation which aims to expand the scope of regulated payment activities to include virtual currency services. Under the draft Bill, payment services providers who intend to carry out virtual currency services are required to obtain either a major payment institution licence or a standard payment institution licence, unless the virtual currency is a limited purpose virtual currency.

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# Regulating anti-money laundering and counter financing of terrorism risks

ICOs and intermediaries who facilitate ICOs, including digital token exchanges, which operate in Singapore must comply with anti-money laundering (“**AML**”) and counter financing of terrorism (“**CFT**”) requirements. Under the draft Payment Services Bill, virtual currency services providers are required to assess transactions (viz. e-commerce or peer-to-peer transactions) for high or low risk of money-laundering and terrorism financing, and potentially required to perform know-your-customer (“**KYC**”) and customer due diligence, unless otherwise exempted. ICO issuers, intermediaries who facilitate ICOs, and operators of digital token exchanges should conduct their own due diligence and KYC checks on their customers before issuing or listing any digital tokens, report any suspicious transaction to the Suspicious Transaction Reporting Office and refrain from dealing with or providing financial services to persons who are designated individuals or entities under the Terrorism (Suppression of Financing) Act (Cap. 325).

## Conclusion

MAS has in its 24 May 2018 press release reiterated that digital token issuers, intermediaries and platforms that offer, facilitate or trade digital tokens are responsible for ensuring that they comply with all relevant laws. We recommend that anyone who plans to raise funds through an ICO in Singapore obtain appropriate legal advice before embarking on their ICO.

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