

SETTING UP A CRYPTO FUND IN SINGAPORE

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Introduction

Cryptocurrencies have very much come back into the news recently since Bitcoin (the most well-known cryptocurrency) rebounded in its price and subsequently went on another roller coaster ride. Much has been said online and in the press about the “rising” prices of Bitcoin and Ethereum reaching new highs only to fall back dramatically, albeit still far above where they were at the start of the year. More obscure cryptocurrencies such as Dogecoin (which began as a joke) attracted substantial flows of funds. Major investors such as Temasek Holdings Ltd, DBS Bank and J.P Morgan have also entered into the digital currency space by announcing their plans to develop Partior, an open industry platform to enable accelerated value movement of payments, trade and foreign exchange settlement, and provide real-time, cross-border multi-currency payments, trade finance, foreign exchange and Delivery-Versus-Payment securities settlements. Partior represents a part of Project Ubin, an initiative by the Monetary Authority of Singapore (“MAS”) to explore the application of blockchain technology involving multi-currency payments and settlements.

Project Ubin is a multi-phase initiative launched by the MAS to build a digital infrastructure in Singapore which include tokenised securities and digital assets as part of Singapore’s financial system. This project also reflects Singapore’s pro-active stance to foster an enlightened acceptance and adoption of digital technology on a national scale, including in the finance sector. As a ripple effect, other institutional and retail investors have become more invested in the fintech sector and cryptocurrency.

Similarly, companies like Venmo have begun allowing users to invest in cryptocurrency as part of their services while Microsoft accepted Bitcoin as a payment method to purchase their products. Most notably Tesla announced it would accept payment in Bitcoin but shortly afterwards changed its position, for

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reasons to do with concerns around the high use of unclean energy by Bitcoin miners according to its founder and CEO Elon Musk.

Fund managers entering the crypto space have been looking into establishing 'crypto-focused' funds ("Fund") that invest in cryptocurrencies which offer investors the opportunity to own cryptocurrencies by owning a share in the Fund. One such pioneer is the Greyscale Bitcoin Trust ("GBT"), which invests entirely in Bitcoin. Accredited investors are able to buy shares of the fund directly at the net asset value in private placements, and sell them on the secondary market to retail investors after a 6-month lockup period. To-date, Three Arrows Capital, a Singapore-based hedge fund has purchased approximately 6.1% of GBT which amounted to approximately USD1 billion in value. Despite the fact GBT, as a closed end vehicle, can trade at a premium to the of the underlying Bitcoin (as well as a discount, as occurred in the recent slump in Bitcoin following Elon Musk's *volte face*), the Fund structure has benefitted investors as the Fund would act as a proxy for investors which would enable the investors to invest and gain indirect exposure to Bitcoin without the challenges of self-custody, and the Fund (eg. GBT) is regulated by the US's Securities and Exchange Commission.

Here is a brief overview of the process of setting up a crypto investment fund in Singapore:

Step 1: Establishing a Legal Entity

Set up an appropriate Singapore legal entity to constitute a crypto fund in Singapore (the "Singapore Entity").

The structure of the Legal Entity could be a Variable Capital Company, Unit Trust, Limited Partnership and Limited Liability Company. A currently popular structure would be the Variable Capital Company for the Fund.

Step 2: Obtaining the relevant licences to manage a crypto fund

A registered fund management company or a licensed fund management company (with a capital markets services licences ("CMS Licence")) is required to operate a collective investment scheme such as a crypto fund in Singapore. Managers of funds may also apply to the MAS for a CMS Licence to operate under the venture capital fund manager regime if the type of assets held by the Fund predominantly constitute "securities" or "capital markets products" under the Securities and Futures Act (Chapter 289 of Singapore) that are investments in unlisted crypto business ventures. The licence required would depend on the nature of the intended investors and quantum of assets under management which the Fund intends to market and manage, although note that cryptocurrency funds are not authorised for sale to retail investors in Singapore.

If the Fund intends to also offer cryptocurrency and digital token/fiat exchange related services specific to cryptocurrencies and crypto tokens (the "Exchange"), the Exchange may also then be considered as a "digital payment token service" by the MAS which constitutes a "payment service" under the Payment Services Act (No. 2 of 2019) (the "PS Act") which would require the Exchange to apply for and obtain a payment institution license ("PIL") from MAS. Generally, the relevant licence (*viz.* a PIL) may be obtained so

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long as the applicant entity meets the requirements under the PS Act for a PIL. The requirements set out in section 9 of the PS Act are not onerous in nature but aim to ensure that the applicant entity is a properly established business with a management team that can provide the appropriate oversight and compliance with on-going regulatory requirements.

In addition, the manager of a Fund that also offers financial advice in respect of digital tokens as an investment product must also obtain a financial adviser's licence, or more commonly an exemption, under the Financial Advisers Act (Cap.110).

Step 3: Preparing the relevant documents for the Fund

The Fund should also prepare/negotiate the relevant documents in order to carry out the Fund's business activities. Such documents include but are not limited to subscription agreement, private placement/information memorandum, investment management agreement, administration agreement and custodian agreement.

Benefits of Setting up the Fund in Singapore

Singapore's approach to and regulatory treatment of cryptocurrency has been open to accepting and recognising crypto funds in Singapore. However, as Singapore's reputation as a financial centre (and fintech hub) is built on clarity, transparency and stability, the Singapore Entity and the fund manager will be bound by MAS' strict Anti-Money Laundering and Counter Financing of Terrorism regulations. In this regard, the regulations being implemented by the MAS in Singapore are aimed against money laundering and the financing of terrorism whilst making Singapore, at the same time, an attractive jurisdiction for crypto fund managers and a relatively safe jurisdiction for cryptocurrency investors.

Singapore also offers a competitive and transparent tax system with the benefit of no capital gains tax and the possibility of tax exemptions for the fund industry, although note that cryptocurrencies themselves are not "designated investments" for purposes of the fund tax incentives.

Our Services at CNPLaw LLP

We have a particular passion and interest in blockchain technology applications, cryptocurrencies, ICOs (including IEOs and STOs {collectively "ICOs"}) and we provide services for fund managers looking set up a crypto fund in Singapore.

We would be able to assist and provide you with all the relevant services from step (1) to step (3), including advising on the optimal legal structure and assisting to incorporate the structure, to reviewing the documentation for your application of the relevant licenses and preparing the relevant documents for the fund.

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