

SUMMARY OF MAS GUIDELINE ON DIGITAL TOKEN OFFERINGS

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On 14 November 2017, the Monetary Authority of Singapore ("**MAS**") issued A Guide to Digital Token Offerings ("**Guide**"). We set out a summary below but encourage you to read the Guide as well.

MAS defines "digital tokens that constitute capital market products" as digital tokens representing equity in a corporation, a debenture of the issuer, or a unit in a collective investment scheme ("**CIS**"). Any offer of digital tokens will be required to comply with the Securities and Futures Act (Cap. 289) ("**SFA**"), including the filing of a prospectus. 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.

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

1. 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**");
2. a person who provides financial advice in respect of any digital tokens; and
3. a person who operates a platform at which digital tokens are traded ("**trading platform**"). A person

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who operates a primary platform in Singapore in relation to digital tokens which constitute any type of capital 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).

A person who establishes or operates a trading platform in Singapore in relation to digital tokens which constitute securities or futures contracts, 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 under the SFA new, unless otherwise exempted.

The MAS made it clear that MAS notices on anti-money laundering ("**AML**") and anti-terrorist financing ("**ATF**") apply to digital token offerings. Thus persons involved have to report suspicious transactions and ensure that they do not deal with or provide financial services to persons who are designated individuals or entities under the Terrorism (Suppression of Financing) Act.

A new payments services framework will be developed with rules dealing with money laundering and terrorism financing risks in the exchange and dealing of crypto currencies for fiat or other virtual currencies. Intermediaries involved in the payment and remittance process will be obliged to implement appropriate policies and control measures to adequately address such risks. These include customer due diligence; keeping good records; monitoring and screening transactions and reporting suspicious transactions.

The Guide also provides 6 case studies to illustrate how the securities laws administered by MAS may apply. Please note that the case studies are for the purpose of illustration only; are not exhaustive and are not indicative or conclusive of how the securities laws will apply to a particular case involving an offer or issue of digital tokens. The illustrations in the case studies are also not exhaustive. MAS encourages persons who wish to offer digital tokens in Singapore or operate a platform involving digital tokens in Singapore to seek professional advice from qualified legal practitioners to ensure that their proposed activities are in compliance with all applicable laws, rules and regulations in Singapore.

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