

## When things go wrong with your token purchase

Crypto firm AriseBank was recently reported to have made false claims, that it was operating a fraudulent Initial Coin Offering[1]. Like the victims of AriseBank, you too may find that you are dissatisfied with the digital tokens that you have purchased. You may not have received the tokens in useable form or obtained the promised features of the cryptocurrency. This article is intended to provide a general summary of possible legal rights under Singapore law that a Token Purchaser may have against a Token Issuer if there has been a misrepresentation by the Token Issuer which induced a token purchase from the Token Issuer.

A Token Issuer may make representations and claims, including for example, promises about what services or goods it will provide to Token Purchasers on its blockchain platform, what its token can do, what licenses the Token Issuer has, what regulations it complies with; and which exchanges their token is or will be listed on. These representations may be made in its White Paper, pitch deck, web site, other marketing materials, orally at meetings, or in the token purchase agreement (“TPA”). If a Token Purchaser subsequently determines that any such representation or claim is untrue or any such claim has not been fulfilled, the Token Purchaser may wish to explore his legal options against the Token Issuer.

### Claim under the Consumer Protection (Fair Trading) Act (“CPFTA”)

The Token Purchaser may be able to make a claim under the CPFTA for Tokens that are not purchased with the intention to be resold. This possible claim will apply only to tokens that are not

purchased for investment purposes but with the intention that they be kept for a function that they perform. An example could be a token that grants access to a blockchain service to store data on a public ledger. If a token is purchased primarily for the function it performs, but with the possibility to resell it at a profit, the Token Purchaser may also not be able to make a claim under the CPFTA. The CPFTA also applies only to individual Token Purchasers, and not businesses or companies.

A claim under the CPFTA is may be made against a Token Issuer who commits an unfair practice, eg. saying or omitting to say anything [in connection with the sale of a token] such that the Token Purchaser may reasonably be misled into purchasing the token. A claim under the CPFTA is limited to a quantum of up to SGD30,000. The aggrieved Token Purchaser must lodge a claim within 2 years from the last unfair practice or the earliest date on which the Token Purchaser had knowledge of the unfair practice. A claim is made by lodgement to the Consumers Association of Singapore (“CASE”). If CASE deems the claim meritorious, it will inform the Token Issuer and request a refund and/or further reimbursement on the purchaser’s behalf. This is cost effective for the Token Purchaser as he would not require legal representation.

### Claim under the civil wrong of misrepresentation

Alternatively, the Token Purchaser may lodge a claim against a Token Issuer on the basis of misrepresentation. In this article, we focus on misrepresentations of a statement of fact made by a Token Issuer to the Token Purchaser inducing

the Token Purchaser to purchase the token.

To establish a misrepresentation, it will be necessary to prove that when the representation was made, the Token Issuer knew or had grounds to know that such representations were untrue. The Token Issuer's active concealment of a particular state of affairs may also amount to misrepresentation[2].

The misrepresentation must be material enough to induce the Token Purchaser to enter into the TPA with the Token Issuer to purchase a token. It is sufficient that the representation played a real and substantial part in influencing the Token Purchaser's decision to enter into the TPA, even though the representation was not the Token Purchaser's only reason for purchasing the token from the Token Issuer.

The claim must be made within 6 years from the act of misrepresentation, or from when the purchaser had knowledge that the represented statement of fact was false, whichever is later.

### Remedies under the claim for misrepresentation

If the Token Purchaser is able to establish his claim for misrepresentation, he will then be able to rescind the TPA. This means that the TPA will be set aside and parties are restored to their respective positions prior to entering into the TPA. This would involve the Token Purchaser returning the token to the Token Issuer, and the purchase price of the token being returned to the Token Purchaser. This remedy is not available to the Token Purchaser if he had sold his Token to a third party (who was not involved in making the misrepresentation) and is no longer able to return the Token to the Token Issuer.

If a rescission is not possible, the Token Purchaser may be able to claim damages, being the losses which flowed directly as a result of his entering into the

TPA with the Token Issuer, regardless of whether the loss was foreseeable. For example, if the Token Purchaser has sold his Token at a loss, the TPA is not rescindable, but he will be able to claim for the difference between the price at which the Token Purchaser has on-sold his token and the purchase price he paid to the Token Issuer for the Token. However, the Token Purchaser must give credit for any benefits which he has received as a result of the TPA[3]. One such benefit the Purchaser could have received would be where the Token had previously risen in value and the Purchaser sold some of it and made some profit – his claim must deduct this profit that he has made.

The Token Issuer may attempt in the TPA to exclude or restrict any liability for misrepresentation. The Unfair Contract Terms Act ("UCTA") imposes a standard of reasonableness on such provisions. The UCTA will apply only if either party deals as a consumer (likely the Token Purchaser who is a natural person). This means that the Token Purchaser does not make the contract in the course of business or holds himself out as doing so, while the Token Issuer does make the contract in the course of a business. Alternatively, if the Token Purchaser is a business entity to purchases tokens as part of its business as well, the UCTA may still apply if the Token Purchaser enters into an agreement on the Token Issuer's written standard terms of business without opportunity for negotiation.

To determine whether a provision in the TPA would be considered reasonable, the following factors are taken into account: (a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the Token Purchaser's requirements could have been met; (b) whether the Token Purchaser received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without

having to accept a similar term; (c) whether the Token Purchaser knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); (d) where the term excludes or restricts any relevant liability if some condition (e.g. that the representations are accurate) is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable.

### Takeaways

Always be careful in considering purchasing digital tokens whether in an ICO or from a crypto exchange. Also, always obtain advice from appropriate professionals, including your lawyer and your tax advisor before entering into a TPA to purchase a digital token.

[1]<https://cointelegraph.com/news/arisebank-founders-to-pay-27-million-in-fines-to-settle-ico-fraud-charges>

[2] *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* (sole executrix of the estate of Ng Hock Seng, deceased) and another [2013] SGCA 36 at [65]

[3] *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* [1996] 3 WLR 1051 at 1060

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For further information on the above, please contact our Cryptocurrency Law and Practice Team.