



Monetary Authority of Singapore

A GUIDE TO DIGITAL TOKEN OFFERINGS

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1 PURPOSE

1.1 On 1 August 2017, the Monetary Authority of Singapore (“**MAS**”) clarified that if a digital token constitutes a product regulated under the securities laws administered by MAS, the offer or issue of digital tokens must comply with the applicable securities laws.

1.2 This paper provides general guidance on the application of the securities laws administered by MAS in relation to offers or issues of digital tokens in Singapore.

1.3 For purposes of this guide, the securities laws refer to the Securities and Futures Act (Cap. 289) (“**SFA**”) and the Financial Advisers Act (Cap. 110) (“**FAA**”).

1.4 The contents of this guide are not exhaustive, have no legal effect and do not modify or supersede any applicable laws, regulations or requirements.

2 APPLICATION OF SECURITIES LAWS ON OFFERS OR ISSUES OF DIGITAL TOKENS IN SINGAPORE

2.1 Offers or issues of digital tokens may be regulated by MAS if the digital tokens are capital markets products¹ under the SFA. Capital markets products include any securities, futures contracts and contracts or arrangements for purposes of leveraged foreign exchange trading.

Digital tokens which constitute capital markets products

2.2 MAS will examine the structure and characteristics of, including the rights attached to, a digital token in determining if the digital token is a type of capital markets products under the SFA.

¹ Under section 2(1) of the SFA, “capital market products” means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading, and such other products as MAS may prescribe as capital markets products.

- 2.3 For instance, a digital token may constitute –
- 2.3.1 a share², where it confers or represents ownership interest in a corporation³, represents liability of the token holder in the corporation⁴, and represents mutual covenants with other token holders in the corporation *inter se*⁵;
 - 2.3.2 a debenture, where it constitutes or evidences the indebtedness⁶ of the issuer of the digital token in respect of any money that is or may be lent to the issuer by a token holder; or
 - 2.3.3 a unit⁷ in a collective investment scheme⁸ (“CIS”), where it represents a right or interest in a CIS, or an option to acquire a right or interest in a CIS.

Please note that the characteristics of a share or a debenture described in paragraph 2.3.1 or 2.3.2 respectively are not exhaustive.

Offerors of digital tokens which constitute securities or units in a CIS

2.4 Offers of digital tokens which constitute securities or units in a CIS are subject to the same regulatory regime under Part XIII of the SFA, as offers of securities⁹ or units in a CIS¹⁰ respectively made through traditional means.

² Under section 2(1) of the SFA, read with section 4(1) of the Companies Act (Cap. 50), “share” means “a share in the share capital of a corporation and includes stock except where a distinction between stocks and share is expressed or implied.”.

³ *Halsbury Laws of Singapore* vol 6, (LexisNexis, 2010) at paragraph 70.343

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, at paragraph 70.394

⁷ Under section 2(1) of the SFA, a “unit”, in relation to a collective investment scheme, means “a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme.

⁸ Under section 2(1) of the SFA, a “collective investment scheme” is an arrangement in respect of any property bearing all of the following characteristics:

- participants have no day-to-day control over management of the property;
- property is managed as a whole by or on behalf of a manager;
- participants’ contributions and profits or income of the arrangement from which payments are to be made to the participants are pooled; and
- purpose or effect (or purported purpose or effect) of the arrangement is to enable participants to participate in or receive profits, income or other payments or returns arising from acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of any right, interest, title or benefit in the property or any part of the property.

⁹ Division 1 of Part XIII of the SFA

¹⁰ Division 2 of Part XIII of the SFA

2.5 A person may only make an offer of digital tokens which constitute securities or units in a CIS (“**Offer**”), if the Offer complies with the requirements under Part XIII of the SFA¹¹. This includes the requirements that the Offer must be made in or accompanied by a prospectus that is prepared in accordance with the SFA and is registered with MAS (“**Prospectus Requirements**”).

2.6 An Offer may nevertheless be exempt from the Prospectus Requirements where, amongst others –

- 2.6.1 the Offer is a **small offer**¹² of securities of an entity, or units in a CIS, that does not exceed S\$5 million (or its equivalent in a foreign currency) within any 12-month period, subject to certain conditions;
- 2.6.2 the Offer is a **private placement** offer¹³ made to no more than 50 persons within any 12-month period, subject to certain conditions;
- 2.6.3 the Offer is made to **institutional investors**¹⁴ only; or
- 2.6.4 the Offer is made to **accredited investors**¹⁵, subject to certain conditions.

The exemptions for a small offer, a private placement offer and an offer made to accredited investors, are respectively subject to certain conditions which includes advertising restrictions¹⁶.

¹¹Please see sections 240 and 296 of the SFA.

¹² Please see sections 272A and 302B of the SFA. A small offer must be a personal offer that satisfies section 272A(3) and 302B(3) respectively. A personal offer is one that is made to a pre-identified person, which includes offers made to persons who have previous professional or other connection with the offeror. As the word “personal” suggests, each personal offer must be made personally by the offeror, or by a person acting on its behalf, to the pre-identified person, and may only be accepted by the pre-identified person to whom the offer was made. Please refer to the Guidelines on Personal Offers made pursuant to the Exemption for Small Offers for further details.

¹³ Please see sections 272B and 302C of the SFA.

¹⁴ Please see sections 274 and 304 of the SFA. Please refer to section 4A(1)(c) of the SFA for the definition of “institutional investor” and regulation 2 of the Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005.

¹⁵ Please see sections 275 and 305 of the SFA. Please refer to section 4A(1)(a) of the SFA for the definition of “accredited investor” and regulation 3 of the Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005.

¹⁶ For more information on the advertising restrictions with respect to offers of shares and debentures, please refer to the Guidelines on the Advertising Restrictions in Sections 272A, 272B and 275 (Guideline No. SFA13-G15).

2.7 In addition, where an offer is made in relation to units in a CIS, the CIS is subject to authorisation or recognition requirements¹⁷. An authorised CIS or a recognised CIS under the SFA must comply with investment restrictions¹⁸ and business conduct requirements¹⁹. Please refer to the Securities and Futures (Offers of Investments)(Collective Investment Schemes) Regulations 2005 (“**SF(OI)(CIS)R**”), the Code on Collective Investment Schemes (“**Code on CIS**”) and the Practitioner’s Guide to the CIS Regime under the SFA, for details.

Intermediaries²⁰ who facilitate offers or issues of digital tokens

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

- 2.8.1 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**”);
- 2.8.2 a person who provides financial advice in respect of any digital tokens;
- 2.8.3 a person who operates a platform at which digital tokens are traded (“**trading platform**”).

2.9 A person 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 must hold a capital markets services licence for that regulated activity under the SFA, unless otherwise exempted.

¹⁷ Please see sections 286 and 287 of the SFA. Please also refer to Part II of the Securities and Futures (Offers of Investments)(Collective Investment Schemes) Regulations 2005.

¹⁸ Please refer to Appendix 1 of the Code on CIS.

¹⁹ Please refer to the Code on CIS.

²⁰ A corporation that wishes to apply for a capital markets services licence may refer to the Guidelines on Criteria for the Grant of a Capital Markets Services Licence (Guideline No. SFA 04-G01) and the Guidelines on Licence Applications, Representative Notification and Payment of Fees (Guideline No. CMG-G01).

2.10 A person who provides any financial advice²¹ in Singapore in respect of any digital token that is an investment product²², 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,²³ under the FAA²⁴.

2.11 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 market²⁵. A person who establishes or operates a market, or hold 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 SFA²⁶, unless otherwise exempted.

Extra-territoriality of the SFA and FAA

2.12 Where a person operates a primary platform, or trading platform, partly in or partly outside of Singapore, or outside of Singapore, the requirements of the SFA may nevertheless apply extra-territorially to the activities of that person under section 339 of the SFA.²⁷ Please refer to the Guidelines on the Application of Section 339 (Extra-Territoriality) of the SFA (Guidelines No. SFA15-G01), for details.

2.13 Where a person who is based overseas, engages in any activity or conduct that is intended to or likely to induce the public, or a section of the public, in Singapore to use any financial advisory service provided by the person, the person is deemed to be acting as a financial adviser in Singapore²⁸.

²¹ Please see section 6, read with the definition of “financial adviser” under section 2(1), of the FAA. Please note that a financial adviser does not include any person specified in the First Schedule to the FAA.

²² Under section 2(1) of the FAA, an “investment product” means (a) any capital markets product as defined in section 2(1) of the SFA; (b) any life policy; or (c) any other product as may be prescribed.

²³ Please see section 6 of FAA.

²⁴ A corporation that wishes to apply for a FA licence may refer to the Guidelines on Criteria for the Grant of a Financial Adviser’s Licence (Guideline No. FAA-G01) and the Guidelines on Licence Applications, Representative Notification and Payment of Fees (Guideline No. CMG-G01).

²⁵ Please refer to Part I of the First Schedule to the SFA for the definition of a “market”.

²⁶ A person operating a platform facilitating secondary trading of tokens which constitute securities may refer to the Guidelines on the Regulation of Markets (Guideline No. SFA02-G01) for guidance on whether it should apply to be an approved exchange or a recognised market operator under the SFA.

²⁷ Please refer to the Guidelines on the Application of Section 339 (Extra-Territoriality) of the SFA (Guideline No. SFA15-G01)

²⁸ Please see section 6(2) of the FAA.

3 Money laundering and financing of terrorism concerns

3.1 MAS emphasises that the relevant MAS Notices on Prevention of Money Laundering and Countering the Financing of Terrorism may apply (“**AML/CFT Requirements**”).

3.2 Digital tokens that perform functions which may not be within MAS’ regulatory purview may nonetheless be subject to other legislation for combating money laundering and terrorism financing. MAS would like to highlight in particular the following:

3.2.1 Obligations to report suspicious transactions with the Suspicious Transaction Reporting Office, Commercial Affairs Department of the Singapore Police Force pursuant to section 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);

3.2.2 Prohibitions from dealing with or providing financial services to designated individuals and entities pursuant to the Terrorism (Suppression of Financing) Act (Cap. 325) and various regulations giving effect to United Nations Security Council Resolutions.

3.3 MAS also intends to establish a new payments services framework (“**New Payments Framework**”) that will include rules to address money laundering and terrorism financing risks relating to the dealing or exchange of virtual currencies for fiat or other virtual currencies. Such intermediaries will be required to put in place policies, procedures and controls to address such risks. These will include requirements to conduct customer due diligence, monitor transactions, perform screening, report suspicious transactions and keep adequate records.

4 ILLUSTRATIONS OF APPLICATION OF SECURITIES LAWS TO OFFERS OR ISSUES OF DIGITAL TOKENS

4.1 The case studies below illustrate how the securities laws administered by MAS may apply. MAS emphasises that these case studies are for the purpose of illustration only. They 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.

4.2 If you wish to offer digital tokens in Singapore or operate a platform involving digital tokens in Singapore, you are encouraged to seek professional advice from qualified legal practitioners to ensure that your proposed activities are in compliance with all applicable laws, rules and regulations in Singapore.

Case study 1

Company A plans to set up a platform to enable sharing and rental of computing power amongst the users of the platform. Company A intends to offer digital tokens (“**Token A**”) in Singapore to raise funds to develop the platform. Token A will give token holders access rights to use Company A’s platform. The token can be used to pay for renting computing power provided by other platform users. Token A will not have any other rights or functions attached to it. Company A intends to offer Token A to any person globally, including in Singapore.

Application of securities laws administered by MAS in respect of an offer of Token A

- A holder of Token A will only have rights to access and use Company A’s platform, and the right to use Token A to pay for rental of computing power provided by other users. Token A will not provide its holder any other rights or functions attached to it. Hence, Token A will **not** constitute securities under the SFA.
- Company A’s offer of Token A will not be subject to any requirement under the SFA or the FAA.

Case study 2

Company B is in the business of developing properties and operating commercial buildings. It plans to raise funds to develop a shopping mall by offering digital tokens (“**Token B**”) to any person globally, including in Singapore. Token B will be structured to represent a share in Company B, and will be a digital representation of a token holder’s ownership in Company B. Company B also intends to provide financial advice in relation to its offer of Token B.

Application of securities laws administered by MAS in respect of an offer of Token B

- Token B will be a share and constitute securities under the SFA.
- The offer of Token B will need to comply with Prospectus Requirements, unless the offer is otherwise exempted under the SFA.
- Company B will likely require a capital markets services licence for carrying on business in the regulated activity of dealing in securities under the SFA, unless otherwise exempted.
- To provide financial advice in relation to its offer of Token B, Company B will need to be a licensed financial adviser, unless otherwise exempted²⁹.

Case study 3

Company C intends to offer digital tokens (“**Token C**”) to any person globally, including in Singapore. Company C will pool funds raised from the offer and use the funds to invest in a portfolio of shares in FinTech start-up companies (“**Portfolio**”). Company C will also manage the Portfolio. Holders of Token C will not have any powers relating to the day-to-day operations of Company C or the management of the Portfolio. Profits arising from the Portfolio will be pooled and distributed as payments to the token holders. The purpose of this arrangement is to enable token holders to receive profits arising from the Portfolio.

²⁹ If Company B holds a capital markets services licence for dealing in securities under the SFA, Company B is exempt from holding a financial adviser’s licence to act as a financial adviser in Singapore in respect of any financial advisory service. Instead, Company B will be subject to certain reporting requirements, including the requirement under regulation 37(1) of the Financial Advisers Regulations (Rg2) to lodge a notification to MAS that it is commencing business in a financial advisory service under the FAA.

Application of securities laws administered by MAS in respect of an offer of Token C

- The arrangement established by Company C in relation to Token C will be a CIS (“**Arrangement**”).
- On this basis, the Arrangement will have to be authorised under section 286 of the SFA, or recognised under section 287 of the SFA depending on whether the arrangement is constituted in Singapore or outside Singapore. The Arrangement will also be subject to the applicable requirements under Division 2 of Part XIII of the SFA, the SF(OI)(CIS)R and the Code on CIS.
- On this basis, Token C will be a unit in a CIS, and constitute securities under the SFA.
- On this basis, Company C will need to comply with Prospectus Requirements in respect of the offer of Token C, unless otherwise exempted under the SFA.
- Company C will likely require a capital markets services licence for carrying on business in the regulated activity of fund management under the SFA, unless otherwise exempted.
- As no financial advisory service will be provided by Company C in respect of Token C, the FAA will not apply in relation to the offer of Token C.

Case Study 4

Company D is a Singapore-incorporated company with operations in Singapore. It intends to offer digital tokens (“**Token D**”) to members of the public, but the offering will not be accessible by persons in Singapore. Company D will pool the funds raised from the offer and use the funds to invest in a portfolio of shares in FinTech start-up companies. Company D will manage the portfolio of shares. Holders of Token D will not have any powers relating to the day-to-day operations of Company D or the management of the portfolio of shares. Profits arising from the portfolio of shares will also be pooled and distributed as payments to holders of Token D. The purpose of this arrangement is to enable token holders to receive profits arising from the portfolio of shares.

Application of securities laws administered by MAS in respect of an offer of Token D

- As the offer of Token D will only be made to persons based overseas (i.e. Token D will not be offered to any person in Singapore), Part XIII of the SFA will not apply to the offer.
- Company D may nevertheless be carrying on the business of fund management in Singapore if it operates the management of portfolio of shares in Singapore. If so, Company D will require a capital markets services licence for carrying on business in fund management, unless otherwise exempted.
- As no financial advisory service will be provided by Company D in respect of Token D, the FAA will not apply in relation to the offer of Token D.

Case study 5

Company E plans to set up a platform that helps start-ups raise funds from investors through digital token offerings (“**Offerings**”). To facilitate the Offerings, Company E will set up one entity (“**Entity**”) which will be used as a vehicle to make investments into a start-up, for every start-up that will make Offerings. Investors who wish to invest into a start-up will provide a loan to the respective Entity (“**Loan**”). In return, the Entity will issue to the investors, digital tokens that are unique to the start-up (“**Token E**”). Token E will be offered to any person globally, including in Singapore. Token E will represent the rights of an investor as a creditor of the Loan provided to the Entity. Company E’s platform will also operate as a market to facilitate trading of Token E among investors using Company E’s platform. In addition, Company E intends to provide financial advice to investors on the Offerings.

Application of securities laws administered by MAS in relation to an offer of Token E

- Token E will be a debenture, and constitute securities under the SFA.
- An Entity will need to comply with Prospectus Requirements in respect of an Offering, unless otherwise exempted under the SFA.
- Company E, in facilitating the purchase or sale of Token E on its platform, may require a capital markets services licence for dealing in securities under the SFA, unless otherwise exempted.
- Depending on the business activities that an Entity undertakes on Company E’s platform, the Entity may require a capital markets services licence for dealing in securities under the SFA, unless otherwise exempted.
- To provide financial advice to investors in relation to an offer of Token E by an Entity, Company E must be a licensed financial adviser unless otherwise exempted.

- Company E is likely be operating a securities market in relation to the trading of Token E. On this basis, Company E will have to be approved by MAS as an approved exchange or recognised by MAS as a recognised market operator under the SFA, unless otherwise exempted.

Case Study 6

Company F is planning to set up a virtual currency exchange platform that allows users to exchange virtual currencies (such as Bitcoin) that do not constitute securities, to fiat currencies. In its initial years of operation, the platform will be configured such that trading of digital tokens constituting securities will not be allowed. This restriction may be lifted after a few years.

Application of securities laws administered by MAS in respect of Company F's virtual currency exchange

- On the basis that Company F's virtual currency exchange will not allow trading of any products regulated under the SFA, the SFA will not apply.
- Company F should re-assess its position should it intend to trade in any digital tokens that constitute securities under the SFA. For instance, upon lifting the abovementioned restriction, Company F will likely be operating a securities market in relation to the trading of digital tokens that constitute securities. On this basis, Company F will need to be approved by MAS as an approved exchange or recognised by MAS as a recognised market operator under the SFA, unless otherwise exempted.

Application of New Payments Framework to Company F's virtual currency exchange

Please note that while the activity of exchanging virtual currencies to fiat currencies is presently not regulated by MAS, MAS intends to regulate such activity under the New Payments Framework.

5 APPLICATION OF SANDBOX CRITERIA ON DIGITAL TOKENS

5.1 Any firm that is looking to apply technology in an innovative way to provide new financial services that are or are likely to be regulated by MAS can apply for the regulatory sandbox. MAS expects that interested firms would have done their due diligence, such as testing the proposed financial service in a laboratory environment and knowing the legal and regulatory requirements for deploying the proposed financial service, prior to submitting an application.

5.2 If an application is approved, MAS will provide the appropriate regulatory support by relaxing specific legal and regulatory requirements prescribed by MAS, which the applicant would otherwise be subject to, for the duration of the sandbox. Please refer to the evaluation criteria outlined in the “[FinTech Regulatory Sandbox Guidelines](#)”.