

## **Telecommunications, Media & Technology Update**

### **Updates on Digital Token Offerings and the Proposed Payment Services Bill in Singapore**

#### **A. Background**

2017 witnessed a worldwide exponential growth in the use of initial coin offerings (“**ICO**”) as a method of fundraising. Nearly US\$5 billion in ICO funding has been raised since January 2017, with a record of over US\$900 million in funding<sup>1</sup> received in November 2017 alone. The rise of ICOs as an alternative fundraising mechanism has prompted the Monetary Authority of Singapore (“**MAS**”) to publish a new set of guidelines on such digital token offerings.

In order to keep pace with developments in financial technology (“**FinTech**”) and the proliferation of new forms of innovative electronic payments and services, MAS had also issued a first public consultation paper on 25 August 2016 proposing the introduction of a single activity-based regulatory framework, and the establishment of a centralized National Payments Council. Since then, MAS has further issued a second consultation paper on 21 November 2017 on the proposed framework, which has now resulted in a Payment Services Bill (“**PSB**”). The proposed PSB sets out two parallel regulatory frameworks, comprising a licensing framework for payment service providers and a designation framework for payment systems.<sup>2</sup>

#### **B. MAS Guide to Digital Token Offerings**

MAS does not currently regulate cryptocurrencies, cryptocurrency intermediaries or the processing of cryptocurrency transactions.<sup>3</sup> MAS instead adopts a more risk-specific and activity-based approach to regulation, which includes calibrating regulatory requirements to specific risks and applying these

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<sup>1</sup> **ICOs In 2017: From Two Geeks And A Whitepaper To Professional Fundraising Machines.** Last updated 18 December 2017 at URL: <https://www.forbes.com/sites/outofasia/2017/12/18/icos-in-2017-from-two-geeks-and-a-whitepaper-to-professional-fundraising-machines/#275521139eae> and last accessed on 19 January 2018.

<sup>2</sup> **Monetary Authority of Singapore Issues Second Consultation on Payments Regulatory Framework, Introduces New Payment Services Bill.** Last updated 11 December 2017 at URL: <https://www.sidley.com/-/media/update-pdfs/2017/12/20171211-ifad-update.pdf> and last accessed on 20 January 2018.

<sup>3</sup> **MAS cautions against investments in cryptocurrencies.** Last updated 19 December 2017 at URL: <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-cautions-against-investments-in-cryptocurrencies.aspx> and last accessed on 18 January 2018.

requirements to activities rather than entities.<sup>4</sup> The potential risks that the regulation aims to guard against, include money-laundering and terrorist financing activities in Singapore.

On 14 November 2017, MAS issued a set of guidelines to clarify the application of its securities laws in relation to digital token offerings in Singapore.<sup>5</sup> Offers or issues of digital tokens may be regulated by MAS if the digital tokens constitute capital markets products pursuant to the Securities and Futures Act (Cap. 289) (“SFA”).<sup>6</sup> MAS will thus examine the structure and characteristics of a digital token to determine if it is akin to such capital markets products. Based on these guidelines, a digital token may constitute one of the following:

- a share, where it confers or represents ownership interest in a corporation, represents liability of the token holder in the corporation, and represents mutual covenants with other token holders in the corporation *inter se*;
- a debenture, where it constitutes or evidences the indebtedness 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
- a unit in a collective investment scheme (“CIS”), where it represents a right or interest in a CIS, or an option to acquire a right or interest in a CIS.<sup>7</sup>

Organisations which intend to issue digital tokens that fall within the definition of capital markets products under the SFA will be required to lodge and register a prospectus with MAS prior to the offering of such digital tokens, unless exempted.<sup>8</sup>

MAS has further identified three types of intermediaries that typically facilitate the offer or issue of digital tokens. Such intermediaries include: (a) persons who operate a platform on which one or more offerors of digital tokens may make primary offers of digital tokens; (b) persons who provide financial advice in respect of any digital token; and (c) persons who operate a platform at which digital tokens are traded. If certain conditions are fulfilled, these intermediaries may be required to obtain specific licenses or approval from MAS to carry out the above activities unless they are otherwise exempted. For example, an organisation will be required to obtain the appropriate capital markets services license in order to offer tokens that constitute a capital markets product, unless exempted.

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<sup>4</sup> **Singapore FinTech Journey 2.0 – Remarks by Mr Ravi Menon, Managing Director, Monetary Authority of Singapore, at Singapore FinTech Festival on 14 November 2017.** URL: <http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2017/Singapore-FinTech-Journey-2.aspx> and last accessed on 8 January 2018.

<sup>5</sup> **A Guide To Digital Token Offerings.** Last updated on 14 November 2017 at URL: <http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%20Licensing/Guidelines/A%20Guide%20to%20Digital%20Token%20Offerings%20%2014%20Nov%202017.pdf> and accessed on 8 January 2018.

<sup>6</sup> *Ibid.* 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 market products.

<sup>7</sup> *Supra*, n 4.

<sup>8</sup> *Ibid.*

Organisations may also consider applying to come under the MAS FinTech Regulatory Sandbox to trial their innovations in a more loosely regulated environment, before releasing it to the public. If approved, MAS may then provide regulatory support by relaxing certain legal and regulatory requirements, so that organisations may test and further refine their innovations in the interim.

### C. Proposed Payment Services Bill

It is said that payments should be swift, simple, secure and supported by streamlined regulation,<sup>9</sup> especially against a backdrop of a rapid developing and evolving FinTech landscape. The existing Payment Systems (Oversight) Act (“**PS(O)A**”) in Singapore governs payment systems and stored value facilities, whereas the Money-changing and Remittance Businesses Act (“**MCRBA**”) regulates money-changing businesses and remittances. However, as payment systems become increasingly sophisticated, these current regulations prove increasingly inadequate in addressing the potential challenges presented by new and innovative payment systems and solutions.

The objectives of the proposed PSB is thus to streamline the regulation of payment services under a single piece of legislation, to expand the scope of regulated payments activities to include cryptocurrency services and to calibrate regulatory oversight according to the risks posed by these activities.<sup>10</sup> It also aims to set standards on technology risk management, and enhance interoperability of payment solutions across a wider range of payment activities.<sup>11</sup>

Under the proposed PSB, payment firms will only require a license under a single regulatory framework to conduct any of the specified payment activities. Licensees offering retail payment activities will be categorised under one of three license classes, namely a money-changing license, standard payment institution license or a major payment institution license.<sup>12</sup> Further, banks, finance companies and non-bank credit card or charge card issuers may be exempted from holding a license and complying with licensing related requirements.<sup>13</sup>

The proposed PSB will also expand the designation criteria for payment systems such as FAST, GIRO and MEPS+. As the disruption of payment systems may potentially lead to financial stability risks or affect

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<sup>9</sup> *Ibid.*

<sup>10</sup> **MAS Launches Second Consultation on New Regulatory Framework for Payments.** Last updated on 21 November 2017 at URL: <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-Launches-Second-Consultation-on-New-Regulatory-Framework-for-Payments.aspx> and last accessed on 8 January 2018.

<sup>11</sup> *Ibid.*

<sup>12</sup> **MAS launches second consultation on new payments regulatory framework.** Last updated on 22 December 2017 at URL: <http://www.singaporelawwatch.sg/slw/attachments/114532/Financial%20Regulatory%201.PDF> and last accessed on 8 January 2018.

<sup>13</sup> *Ibid.*

confidence in the financial system, the proposed PSB will also allow MAS to designate such payment systems to be regulated for efficiency or competition reasons.<sup>14</sup>

#### *D. Conclusion*

The MAS Guide to Digital Token Offerings provides a timely update and gives some guidance to individuals and businesses involved in digital tokens and virtual currencies. However and given the rapidly evolving FinTech landscape and the popularity of digital tokens and ICOs, it is envisaged that further regulation will be required in time. The proposed PSB aims to promote greater confidence among consumers and merchants, and encourage the wider adoption of electronic payment systems.<sup>15</sup> In line with the rapid developments in FinTech, at least two more consultation papers are expected to be published on electronic payments, which include a discussion on fraud and error resolution processes and to determine the appropriate standards on the protection of access to funds. We can therefore anticipate further developments and refinements to the regulatory regime in this area, and in response to the rise of disruptive technologies in this sector.

Should you have any queries as to how this update may affect your organisation or require further information, please do not hesitate to email us.



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*This article is intended to only highlight the salient issues relating to the recent November 2017 MAS updates on virtual currencies regulation and the Proposed Payment Services Bill that has been introduced in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as at 30 January 2018. The authors of this article would like to express their appreciation to Ms Persis Hoo, a practice trainee at Gateway Law Corporation, for her assistance and contribution to this article.*

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<sup>14</sup> **Consultation Paper, Proposed Payment Services Bill.** Last updated 21 November 2017 at URL: [http://www.mas.gov.sg/~media/resource/publications/consult\\_papers/2017/Consultation%20on%20Proposed%20Payment%20Services%20Bill%20MAS%20P0212017.pdf](http://www.mas.gov.sg/~media/resource/publications/consult_papers/2017/Consultation%20on%20Proposed%20Payment%20Services%20Bill%20MAS%20P0212017.pdf) and last accessed on 20 January 2018.

<sup>15</sup> *Ibid.*