

Regulatory Updates

1. Update to the MAS Digital Guide to Token Offerings

The Guide to Digital Token Offerings (“**Guide**”) was updated on 30 November 2018 by MAS. The Guide now includes further illustrations relating to tokens pegged to a currency, tokenisation of commodities, global offering of tokens and advisory services on the digital token offering process.

When applying the law, companies are advised to look beyond labels such as “utility tokens” or “stable coins” and examine the features and characteristics of each digital token being offered.

Notable illustrations are highlighted below.

Tokenisation of commodities (e.g. diamonds)	<p>A capital markets licence may be required where (1) the token represents physical commodities (e.g. diamonds), (2) token holders may <i>sell</i> back the tokens at any time to the issuer, and (3) the token does not represent a right to the physical commodities.</p> <p>This is because the token may represent a debenture.</p>
Tokens pegged to a currency (e.g. certain types of “stablecoins”)	<p>Where a token is backed by a fiat currency reserve and token holders have a right to exchange the tokens with the issuer for a fixed value (e.g. USD\$1), the token may be considered a debenture and “e-money”.</p> <p>Companies may require a capital markets services licence and a licence under the Payment Services Bill.</p>
Foreign Offer of Digital Tokens Must Separately Comply with Singapore Laws	<p>Individuals or companies that are involved in token offerings should carefully examine the Guide and the accompanying case studies and separately assess whether its offer of tokens in Singapore would comply with the securities laws administered by the MAS. This is despite any compliant assessment under a particular foreign law such as US law (Case study 7, Guide).</p> <p>Notably, all individuals and companies are advised to answer all the Critical Questions in Appendix 1 of the Guide. The Critical Questions include, among others, whether the individual or company has sought independent legal advice from a Singapore-qualified lawyer, and whether any proposed structure is similar to that described in the case studies in the Guide.¹</p>
Token Advisory Services	<p>Separately if a company offers token advisory services (from pre-offering to post-offering such as reviewing whitepapers, advising on security protocol) and delivery of tokens to companies to raise funds, such tokens may be seen to be a digital payment token and the company may be seen to be carrying on a business of providing the service of dealing in digital payment tokens. Its services may be regulated under the Payment Services Bill and the company is advised to apply for a licence under the Payment Services Act when the Act</p>

¹ Paragraph 6.1, MAS Response

	<p>commences. This is distinct from the issue where such digital tokens do not constitute capital markets products since they can only be exchanged for products or services without entitling the holder to receive any payments of any kind from any person.</p> <p>The company also should not provide advice on the applicability of Singapore laws to the digital token offerings and should not advise on the risks or suitability of the digital token offering to investors.</p>
Other Updates	<p>The update also includes clarity on the process to consult with the MAS, anti-money laundering and terrorist financing requirements, alignment with the updated Securities and Futures Act and reference to the Payment Services Bill.</p> <p>For more details, please refer to the latest Guide available here.</p>

2. Changes to the Payment Services Bill ("PSB")

On 19 November 2018, the PSB was moved for First Reading in Parliament. The PSB is due for the second reading at the next available sitting in Parliament.

Some changes were made since the PSB was first published in 2017 as summarised below:

No.	Definition	Change	Comments
1.	Change to definition of "e-money"	<ul style="list-style-type: none"> Previously, "e-money" referred to electronically stored monetary value denominated in any currency. Now, "e-money" includes electronically stored monetary value that is pegged by the issuer to any fiat currency. 	This is contrasted with "digital payment tokens" whose value is determined by the market. ²
2.	Change to definition of "virtual currency" to "digital payment token"	<ul style="list-style-type: none"> "virtual currency" has been revised to "digital payment tokens" for accuracy. Now, "digital payment tokens" that are pegged to any currency will be considered "e-money". 	Regulations that apply to "e-money" will apply to tokens that are pegged to any currency. ³
3.	Change to calculation of thresholds for Major Payment Institutions	Calculation of the threshold for licensing will be the average, over a calendar year, of the total value of all payment transactions that are accepted, processed or executed by the entity in one month ("Average Payment	Standard Payment Institutions will have a grace period to update the licence upon the occurrence of a sudden increase in Average Payment

² Paragraph 3.14, MAS Response

³ Paragraph 3.18, MAS Response

		<p>Transaction”)</p> <p>Major Payment Institution Licence required if:</p> <ul style="list-style-type: none"> Any licensable activity⁴ if the Average Payment Transaction exceeds S\$3 million; or For 2 or more licensable activities, where the Average Payment Transaction exceeds S\$6 million.⁵ 	Transaction. ⁶
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In reviewing the feedback received on the Proposed Payment Services Bill, MAS provided further clarification on digital token intermediaries:

MAS Clarification	What this means to the Blockchain Community?
A digital payment token intermediary will be regulated in the PSB if it processes either fiat currencies or virtual currencies. ⁷	Points of intersection that provide gateways to the regulated financial system and nodes through which value may be moved will be regulated. ⁸
MAS expects further regulations on “Virtual currency services” to address emerging money laundering and terrorist financing risks . ⁹	MAS will likely develop subsidiary legislation on anti-money laundering and counter-terrorist financing measures the licensees must adopt.
The MAS Response clarifies that an entity licensed under the PSB is not allowed to carry on the business of granting any credit facility to any individual in Singapore. ¹⁰	Getting a licence under the PSB will not enable an entity to conduct consumer lending. ¹¹
The Guidelines on Technology Risk Management will be applicable to all licensees. MAS plans to further issue a Notice on Cyber Hygiene that will apply to all licensees. ¹²	The Guidelines on Technology Risk Management may be found here . The guidelines set out best practices to guide financial institutions in establishing, <i>inter alia</i> , a robust technology risk management framework and strengthening of cyber security controls. ¹³

Further details may be found in the full MAS Response found [here](#).

⁴ Excluding any money-changing service and any account issuance service where each payment account issued stores e-money
⁵ Paragraph 4.9, MAS Response
⁶ Paragraph 4.10, MAS Response
⁷ Paragraph 3.19, MAS Response
⁸ Paragraph 3.19, MAS Response
⁹ Paragraph 3.19, MAS Response
¹⁰ Paragraph 3.9, MAS Response
¹¹ Paragraph 3.9, MAS Response
¹² Paragraph 5.39, MAS Response
¹³ Paragraph 5.38, MAS Response

Conclusion

Overall, the recent updates and amendments show increasing scrutiny and understanding of digital tokens by regulators in Singapore. Companies and entrepreneurs should carefully look beyond labels and examine the features and characteristics of any such offer of digital tokens (including securities, securities based derivatives, CIS) and seek appropriate advice where in doubt.

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