

What is an Initial Coin Offering (ICO)?

An ICO is the rough equivalent to an Initial Public Offering (IPO) in the finance world where a company seeks public funding for its cryptocurrency venture by selling its digital tokens in exchange for fiat currencies or cryptocurrencies.

What is a digital token?

A digital token is a cryptographically-secured representation of the token-holder's rights to receive a benefit or a planned future use, such as allowing token-holders to access a digital platform, products, services or utilising an alternative digital token. There are essentially three types of digital tokens, namely, (i) cryptocurrencies, (ii) utility tokens, and (iii) security tokens.

- i. **Cryptocurrencies** are virtual currencies that function as a medium of exchange, a unit of account and/or a store of value. It is a means to pay for products or services that is secured by cryptography (in the form of blockchain technology) to prevent counterfeiting. One of the key benefits of cryptocurrencies is the ease of fund transfer without the need of financial intermediaries, banks and government interference. Popular examples include Bitcoin and Ether.
- ii. **Utility tokens** issued by companies can represent a planned future use of the company's product or service for the token-holder. For instance, Filecoin is a decentralised storage network provider that supplies cloud storage and allows token-holders with utility tokens to access its cloud storage platform.
- iii. **Security tokens** issued by companies provide the holder with ownership rights over the company. Just like a stock, the owner buys with the hope of either a dividend payout, capital appreciation, or both. However, since it is treated as a security, it will be subjected to regulations.

Regulatory Updates:

SGX had on, 19 November 2018, published a Regulator's Column setting out what is expected of listed companies conducting an ICO. Shortly after, MAS issued its guide, "A Guide to Digital Token Offerings", on 30 November 2018, that provides guidance on the application of Singapore securities laws for digital token offerings. Key takeaways of SGX Regulatory Column and the MAS Guide will be discussed in this regulatory update. Please click here for a copy of the [SGX Regulatory Column](#) and [MAS Guide](#).

In a nutshell:

SGX Regulatory Column

- *Listing Rules will only apply to the issuer and not the tokens nor the token-holders as none of the digital tokens will be listed on SGX.*
- *Pre-consult is expected by SGX for any listed issuer that intends to carry out an ICO.*
- *Certain disclosures requirements (elaborated below) is expected from issuers conducting ICOs.*

MAS Guide

- *Digital tokens that are construed as "capital market products" will be required to comply with the Securities and Futures Act (SFA), which includes registering a prospectus with the MAS.*
- *Guidance is provided for matters such as (i) Application of Securities Law, (ii) Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Requirements, (iii) Case Studies, (iv) Sandbox for Digital Tokens, and (v) Enquiries to MAS.*

1) SGX's Pre-consultation Requirements

- To provide legal opinion on the nature of the digital tokens as well as its auditors' opinion on the ICO's accounting treatment, both of which must come from reputable professional firms.
- The issuer and the auditors must be in agreement on the scope of the audit.
- The auditors to provide assurance that the ICO has been properly accounted in the financial statements, the associated risks adequately addressed and milestones on the utilisation of funds have been adhered to.
- SGX retains the right to require additional opinions and it will provide a prescribed compliance checklist to be addressed by the issuer.

2) SGX's Initial ICO Disclosure Requirements

- The rationale for, and risks (including operational, cyber security, manipulation, legal and reputational risks) arising from, the ICO;
- The use of funds raised and key milestones to be achieved in utilising the funds;
- "Know-your-customer" checks to be conducted to address money laundering and terrorist financing risks;
- The accounting and valuation treatments for the ICO;
- The use of existing issuer funds to conduct the ICO, if any;
- The financial impact on the issuer as a result of the token issuance as well as impact of any contingent settlement provisions;
- Any impact on existing shareholders' rights; and
- Any other information as SGX thinks necessary.
- Consider holding sharing sessions with shareholders to ensure that they fully understand what an ICO entails for the issuer

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- Equity Research for SMEs listed on SGX
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- Advising on Compliance to Listing Obligations and Corporate Governance Code
- Monitoring Share Trading Activities
- Review and Approve Announcements, Annual Reports and Circulars prior to release
- Perform an intermediary role between the Company and SGX

For more information on ICO, please refer to our writeup from SAC Knowledge Hub which answers questions such as:

- How's Singapore's ICO Landscape?
- What makes Singapore an ICO haven?
- Past ICOs in Singapore
- Singapore First ICO advisory Centre
- International landscapes
- Benefits and Risks of ICO

Please click [here](#) for the article.

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3) SGX's Post-ICO disclosure requirements

- SGX would expect the listed issuer to keep its shareholders informed of material information, the development of the ICO and digital tokens on a timely basis, as well as the use of ICO proceeds, among other such crypto-currency related disclosures.

4) MAS- A Guide to Digital Token Offerings (Guide)

MAS has issued the Guide on 30 November 2018 to further enhance its guidance on regulating digital tokens. This is after the initial guidance from MAS on 1 August 2017 which clarified that if a digital token is construed as capital market product, the digital token, its offer and issuance will be subjected to SFA. In this Guide, MAS elaborated that the Guide's contents are not intended to be exhaustive, have no legal effect and do not modify or supersede any existing laws. Summary of the key takeaway points are as follows:

- Application of Securities Law.** MAS will regulate offers or issuance of digital tokens if the digital tokens are deemed to be capital markets products that is defined under the SFA. Capital markets products include any securities, units in a collective investment scheme, derivatives contracts and spot foreign exchange contracts for purposes of leveraged foreign exchange trading. Issuers should examine the features and characteristics of its proposed digital token with the help of a Singapore-qualified legal practitioner that is familiar with MAS-administered laws and applicable regulations.
- Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Requirements.** MAS has provided AML/CFT requirements for financial intermediaries that facilitates offers of digital tokens. This does not preclude digital tokens that are not within the MAS regulatory purview. In addition, a [Payment Services Bill \(PSB\)](#) was introduced by MAS on 19 November 2018 to regulate payment services. Among others, PSB requires the person providing any service of dealing and facilitating the exchange of digital tokens to be licensed and regulated under the PSB for AML/CFT purposes.
- Case Studies.** Under the Guide, MAS has provided 11 case studies illustrating how securities laws maybe applied for various business models and activities involving offers or issues of digital tokens. If the structure of the proposed digital token is similar to that described in the case studies, there is no need to approach MAS.
- Sandbox for Digital Tokens.** Any issuers that would like to provide financial services that are regulated by MAS can apply for a regulatory sandbox on its digital tokens for regulatory support and relaxing of specific legal and regulatory requirements. 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. For more information, please refer to the evaluation criteria outlined in the "[FinTech Regulatory Sandbox Guidelines](#)".
- Enquiries to MAS.** Please refer to Appendix 1 of the Guide for a list of Critical Questions to determine if it is necessary to write in to the MAS. The issuer can proceed to write in to MAS to clarify whether the digital token offering is subject to MAS regulations after it has obtained legal advice and determined that the proposed business model is not similar to the case studies in the Guide. The issuer can proceed to submit an application to MAS enclosing all the information required in Appendix 2. Please click [here](#) for the appendices.

Conclusion

Notably virtual means of payments, digital tokens and the ICO landscape is dynamic and ever-changing. In terms of ICOs, it is clearly noted that both MAS and SGX, do not pass judgement on its commercial benefits. Both do, however, provide guidance such as application of securities laws by MAS and SGX's pre-consult and disclosure requirements of an ICO. For ICO disclosure requirements, it is expected of listed issuers to comply with the usual disclosure principle in providing material information in a clear, accurate and timely manner in order for investors to make an informed decision. Lastly, SGX expects the issuer's board to hold the ultimate responsibility in maintaining a robust system of risk management and internal controls when conducting an ICO.

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