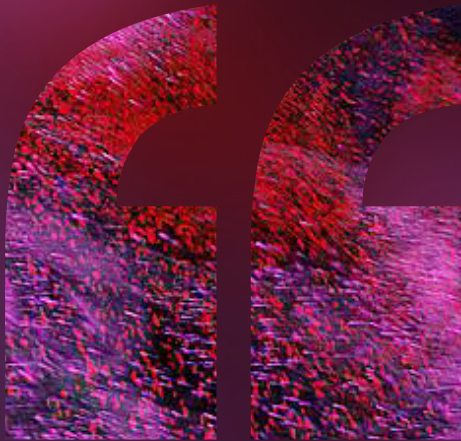
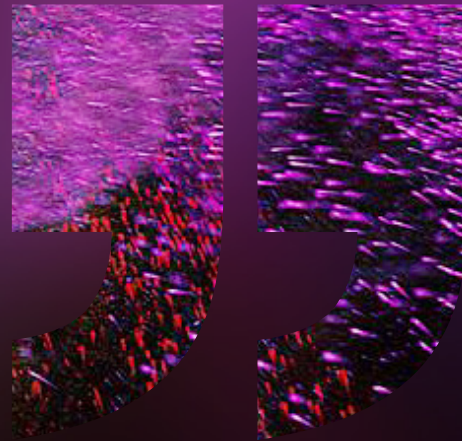


C L I F F O R D

C H A N C E



**SECURITY TOKEN
OFFERINGS –
THE SHAPE OF
REGULATION ACROSS
ASIA-PACIFIC**



– THOUGHT LEADERSHIP

NOVEMBER 2020

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SECURITY TOKEN OFFERINGS – THE SHAPE OF REGULATION ACROSS ASIA-PACIFIC

Security token offerings or STOs, the issuance of digital tokens using blockchain or distributed ledger technology, are increasingly being seen as an alternative to mainstream debt and equity fundraisings. An evolution of the (supposedly) unregulated initial coin offerings or ICOs, STOs are typically structured to sit within securities law frameworks. This means much greater certainty for both fundraisers and investors, resulting in enhanced liquidity. In this report we consider how STOs are structured and some of the benefits and challenges, and explore the evolving regulatory landscape for STOs across key financial centres in Asia-Pacific.

Summary

- STOs involve the issuance of digital tokens which are classed as or represent securities to investors.
- Tokens issued under an STO will typically entitle holders to rights similar to those of a conventional security, e.g., an equity token may grant voting or dividend rights, while a debt token may grant rights to coupon and principal payments.
- There is currently no uniform global taxonomy for categorising or defining cryptoassets, and STOs are not regulated at an international level.
- National approaches to the regulation of STOs vary considerably. In most cases, STOs are primarily regulated under traditional securities law. However, there are differences in both substance and application.
- At one end of the spectrum countries like Japan have amended securities legislation to specifically regulate STOs. Conversely, STOs and similar token offerings have been banned in China since 2017.

TERMINOLOGY AND CLASSIFICATION OF SECURITY TOKENS

What are security token offerings (or STOs)?

STOs are a form of fundraising involving the offering or issuance of digital tokens to investors, which either are themselves or represent a security under the laws where they are issued. Typically, distributed ledger technology (DLT), such as blockchain, or other digital infrastructure which permits tokenisation, is used to constitute or record the interests in the securities. Such use of DLT can provide greater flexibility, speed and functionality, reduce costs and, in some cases, enhance compliance with legal and regulatory obligations in the issuance of securities. This can open up markets for fundraisers and options for investors, providing enhanced liquidity, particularly for asset classes traditionally viewed as illiquid.

Market participants may be familiar with the “initial coin offerings” (or ICOs) seen in 2017-18, typically conducted through an online platform maintained by the issuer that any investor can access directly through a computer or smart-phone. ICOs were sometimes seen as a quick and easy way to fundraise outside the scope of traditional regulatory frameworks for debt and equity issuances. However, the structuring of many ICOs fell short, and they often unintentionally triggered legal and regulatory obligations that were not complied with. Combined with a

number of fraudulent issuances, ICOs ultimately drew the scrutiny of regulators globally.

STOs are the market response to this; a product offering many of the advantages of ICOs without the risks entailed by seeking to remain outside the regulatory perimeter. In some jurisdictions, the form and process adopted for an STO may be similar to an ICO. However, in most jurisdictions, subject to exemptions under applicable securities laws, the process for issuing security tokens should be no different to a primary public or private offering of equity or other traditional security offering, i.e. a regulated process with significant documentation requirements, and in practice often still effected through a chain of intermediary banks and other financial services providers. The ecosystem of regulated service providers capable of performing the traditional functions required to effect an STO in compliance with local securities laws is emerging, although at varying speeds in different jurisdictions.

What is a token?

A token is the common term applied to the digital entry where a person is recorded as owning a unit or other entitlement through a DLT-based register or other digital infrastructure which permits tokenisation. The token may, in its simplest form, amount to a permission to control a resource native to DLT (for example, Bitcoin or Ether), it may grant certain rights to the holder (for example, use of office space or rights to share in profits of a company) or it may represent an offline “real world” asset, such as a

stock, bond, commodity or interest in real estate. The latter is commonly referred to as the “tokenisation” of such underlying assets.

DLT tokens can be differentiated from other forms of electronic register as a DLT platform typically permits holders to verify their holdings on a public chain, to send direct instructions to the relevant network to transfer their tokens, and to use their tokens in other ways, e.g., to interact with a smart contract or to implement sophisticated computing logic. As the real name of the owner is not necessarily recorded in the DLT registry, “holding a token” often means controlling the key or other access credentials needed to send the instructions to the network authorising the transfer of the token, in effect making them bearer assets. In the case of tokenised securities, many investors will need or prefer to use a custodian or other service provider to hold the keys for them. In some cases this may be undertaken by the issuer of the securities.

DLT provides enhanced functionality compared with traditional systems of recording ownership of assets by being globally acknowledged as the true source of information on the holdings of the tokens by all members of the network, allowing them to individually verify the validity of token transfers on their own, without needing to trust a central authority or each other. However, the flip side is that (subject to the underlying features of the DLT) instructions may be irreversible once sent to the network in respect of the tokens – creating risks by reducing ownership and other rights over tokens to whoever holds that key.

DLT tokens may also be referred to as “cryptoassets” as they are seen as rights in respect of what a person holding a token can do (claim underlying assets, update a network etc), with crypto as a reference to the cryptographic technology used to structure and operate a DLT platform. An STO generally refers to the issuance of a subset of cryptoassets, virtual assets or other digital assets which constitute, represent, or confer the rights associated with, traditional financial securities.

What is a security token?

In an STO, the form of the token will be similar to those issued to participants in an ICO in that DLT or other digital

infrastructure which permits tokenisation will be used to issue coins or tokens. However, in contrast to an ICO, the tokens distributed are, represent or provide a right to a specific class of financial assets that are legally “securities”, such as shares, bonds, warrants or options, or otherwise provide the same rights as “securities” (including for example, interests in a collective investment scheme). The definition of what constitutes a security will vary from jurisdiction to jurisdiction. Therefore a particular token may be a security token under the laws of one jurisdiction but not in another.

In many jurisdictions, a token will amount to a security when it represents a right to any financial return and claim on the issuer – even where such financial return is entirely dependent on the success of a particular project. This is different from ICOs or other cryptoasset offerings with the purpose of fundraising, but which take the form of a sale or pre-sale of specific goods and services (for example, a real world asset, a licence or a use right), rather than any interest in the issuer itself, such as a claim on its revenues or the right to participate in its governance.

The tokens issued under an STO will typically entitle holders to rights similar to those of a conventional security, depending on the nature of the security represented by the token or the specific rights granted by the token. For example, an equity security token may represent ownership over an underlying share or otherwise grant a claim to the equity in a company, voting rights or the right to dividends, while a debt security token may represent ownership over an underlying bond or grant a right to predefined coupon or principal payments.

In this report, we generally use the term “STO” to refer to security tokens that have been intentionally structured to confer the types of rights granted in conventional securities, i.e. tokenised debt and equity. In some cases, the tokens issued in ICOs or other cryptoasset offerings might also constitute securities. In the US, for example, the Securities and Exchange Commission has taken the position that certain issuers of “utility tokens” in ICOs offered securities for the purposes of US law, and accordingly violated the

registration and disclosure provisions of the federal securities laws.

Regulation of STOs

Due to the legal status of security tokens as securities, the generally more onerous regulatory regimes applicable to securities will typically apply to STOs in addition to any more recent regulations specific to issuing tokens or other cryptoassets.

In contrast, ICOs may be structured without the need to register or comply with securities regulations and regulatory bodies. However, as noted above, this is not always clear-cut and, in several jurisdictions, ICO issuers have inadvertently triggered and been in breach of securities laws.

A variety of approaches have been taken globally as to the regulation of STOs. There is now considerable opportunity for regulators to adapt existing securities regulation to the unique features of STOs while also maintaining similar protections for investors and the financial system that underpin securities regulation.

Regulatory themes across Asia-Pacific

There is currently no uniform global taxonomy for categorising or defining cryptoassets, and STOs are not currently regulated at an international level.

In most of the jurisdictions we have considered, a technology-neutral approach is taken which means that, subject to meeting any relevant conditions, STOs would generally be covered by existing securities legislation and frameworks. This also means that existing licensing and product authorisation requirements in relation to such frameworks apply to participants in an STO. While there are often similarities, for example, in terms of disclosure or prospectus requirements, securities law obligations and licensing requirements vary between jurisdictions and so participants will need to carefully consider obligations in each relevant jurisdiction in Asia-Pacific and internationally. This analysis is more complicated than one might expect, given it will involve digital assets promoted online and certain securities law frameworks may apply extraterritorially.

A number of regulators have looked closely at the existing regulatory regime for securities and issued guidance or

taken a new approach under a pre-existing regulatory regime in relation to how it applies to STOs and other virtual assets. In Japan, the Diet (parliament) has gone a step further and specifically amended the existing securities law to regulate STOs.

The People's Republic of China is something of an outlier – ICOs, STOs and similar token offerings have been banned there since 2017.

Our approach

In this report we have focused on securities and related regulations; however, there are a range of legal and regulatory provisions that may also be relevant to participants in an STO over and above the frameworks that we describe. For example, in relation to data privacy, tax and other levies, cyber-resilience, corporate governance, and systems and controls. How these apply will depend significantly on the specific STO and, in some cases, the corporate form and status of the service provider (i.e. regulated or not and, if so, how) and so are beyond the scope of this report.

The focus of this paper is on STOs, i.e. primary market offers of tokens that have been intentionally structured to confer the types of rights granted in conventional securities. As such, this paper does not consider in detail the regulatory treatment of other types of cryptoassets (such as stablecoins, which may in some cases qualify as e-money or cryptocurrencies under applicable regimes). A detailed consideration of the regulatory requirements that may apply when carrying on other activities relating to security tokens (such as secondary market trading or providing investment advice or custody services in relation to security tokens) is outside the scope of this paper.

It is also worth noting that the analysis has broadly been undertaken on a domestic basis, i.e. in relation to an STO that is conducted and also marketed to investors solely in that jurisdiction and/or in relation to an STO by an issuer based in that jurisdiction. However, where there are regulatory requirements in a jurisdiction, these may also apply to an STO conducted elsewhere and/or by a foreign issuer where there is active marketing of security tokens to investors in that regulated jurisdiction.

OVERVIEW OF LOCAL REGULATION

We have drawn together some of the high-level conclusions from this report by ranking each relevant jurisdiction on its approach to the regulation of STOs, as well as considering whether a regulatory sandbox might be available for STO participants and the general level of crypto market activity.

Level of crypto market activity
● Least active
● Active
● Most active

Jurisdiction	Does the usual regulatory framework for securities apply to STOs?	Do licence requirements apply to investors in an STO?	Is there specific local regulation or guidance relevant to STOs?	Does a regulatory sandbox exist?
● Australia	Yes, if certain conditions are met.	Generally no, but will depend on the nature of the investor and whether on-selling is contemplated.	ASIC has issued specific guidance on STOs and when security tokens will constitute securities.	Yes.
● Hong Kong	Yes, if certain conditions are met.	Generally, no.	The SFC has issued circulars, statements, position papers and guidelines on virtual assets that would apply to STOs.	Yes.
● Japan	Yes, if certain conditions are met.	Generally no, but will depend on the nature of the investor and how the offering is contemplated.	The Japanese securities law FIEA has been specifically amended to regulate STOs. The Japan STO Association has issued Security Token Offering Guidelines.	Yes.
● People's Republic of China	No, STOs are prohibited in China.	Not applicable.	Not applicable.	Not applicable.
● Singapore	Yes, if certain conditions are met.	Generally, no.	The MAS has issued general guidance on digital token offerings. Offers of digital tokens which constitute securities or securities-based derivatives contracts are subject to the same regulatory regime as offers of securities, or securities-based derivatives contracts made through traditional means.	Yes.

Note: Consideration of whether a licence will be required for investors in an STO has been based on a simple STO issuance made directly to investors. This analysis does not constitute legal advice. Other licence requirements (whether or not securities related) are likely to apply to other participants; for example, an underwriter of an STO, or a custodian/ trustee where tokens are issued into a custody/ trust arrangement. There may also be a statutory requirement for the involvement of other authorised intermediaries for the settlement and/or transfer of security tokens.

COUNTRY-SPECIFIC ANALYSIS OF STO REGULATION ACROSS ASIA-PACIFIC

AUSTRALIA

Australia has not implemented a specific legal or regulatory regime covering STOs. The Australian Securities and Investments Commission (ASIC), Australia's corporate regulator, has instead taken the approach of regulating offerings of security tokens generally in the same way as other types of "financial products". A security token will typically be regulated and subject to ASIC's remit in Australia as a "financial product" if it is either a security, an interest in a managed investment scheme, or another type of financial product.

Characterisation as a security

ASIC has issued guidance that security tokens may be regulated as "securities" for the purposes of the Corporations Act depending on their nature and characteristics. Securities under the Corporations Act generally encompass instruments such as shares, debentures, stocks and bonds.

Whether a security token constitutes a "security" is to be assessed on a case-by-case basis, with such assessment looking in particular at whether the bundle of rights attached to the security token are similar to those commonly attached to a security. For example, a security token that gives its holder rights analogous to a share (such as an ownership interest in a company, voting rights in decisions of a company or some right to participate in the profits of a company) is likely to be a security and regulated as a share under the Corporations Act accordingly. Similarly, if a security token gives the purchaser a right to acquire shares in a company at a time in the future then that token may be a security analogous to an option.

If a security token does constitute a security, the issuer of that security token will need to comply with the relevant capital raising provisions of the Corporations Act associated with that type of security. This includes, for example, the requirement to provide a prospectus when issuing a share style token. Various stakeholders in the

security token ecosystem (such as issuers, intermediaries, exchanges and trading platforms) may also need to hold an Australian Financial Services Licence (AFSL) and to comply with the licence conditions and increased legislative obligations placed on AFSL holders. On-selling restrictions may also be triggered in relation to security tokens, depending on the nature and characteristics of the on-seller and those to whom the security tokens are being on-sold.

Characterisation as a managed investment scheme

Security tokens may alternatively qualify as an "interest in a managed investment scheme". A managed investment scheme is a form of collective investment vehicle. It has three elements: (i) people contribute money or assets to obtain an interest in the scheme, (ii) any of the contributions are pooled or used in a common enterprise to produce financial benefits or interests in property for purposes that include producing a financial benefit for the contributors, and (iii) the contributors do not have day-to-day control over the operation of the scheme, but at times may have voting rights or similar rights.

Where the issuer of a security token is operating a managed investment scheme, it will need to hold an AFSL. Further, if the managed investment scheme is aimed at retail investors, the issuer will also need to register the scheme with ASIC, establish a constitution and compliance plan, and prepare and issue disclosure documentation such as a product disclosure statement.

Characterisation as another type of regulated financial product

If a security token does not qualify as a security or managed investment scheme, it may still be a "derivative" for the purposes of the Corporations Act, which is a type of regulated financial product. A security token may be a derivative where it is priced based on an underlying factor, such as by reference to the performance of another financial product or a market index. Where a security token is a "derivative", the issuer will need to prepare and issue disclosure documentation such as a product

disclosure statement if the tokens are aimed at retail investors, and various stakeholders in the security token ecosystem (such as issuers, intermediaries, exchanges and trading platforms) may also need to hold an AFSL.

A security token may also be a “non-cash payment facility” (NCP Facility), which is another type of regulated financial product. An NCP Facility is an arrangement through which a person makes payments, or causes payments to be made, other than by the physical delivery of currency. A security token arrangement may involve an NCP Facility where it allows (i) payments to be made in the form of the token to a number of payees, and (ii) payments to be started in the form of the token and converted into fiat currency to enable completion of the payment. The provider of an NCP Facility may need to hold an AFSL.

Other regulatory considerations

Stakeholders in security token arrangements should also be aware of other general regulations and legislative requirements under Australian law. For example, obligations exist not to mislead or deceive consumers under Australian consumer law and the ASIC Act, as well as anti-money laundering and “know your client” obligations.

Potential participants in a security token arrangement should also be aware of the ASIC regulatory sandbox. On 1 September 2020, ASIC implemented an expanded version of its regulatory sandbox, dubbed the “Enhanced Regulatory Sandbox” (ERS). The ERS allows financial technology businesses to test certain services without needing to hold an AFSL or credit licence. The ERS replaces the previous 2016 sandbox and allows for a longer testing period for a broader range of financial services and credit activities, and for a wider range of businesses.

HONG KONG

The regulators in Hong Kong have adopted a technology neutral regulatory approach and are seeking to regulate virtual assets and related activities based on the existing legislative framework. The overall theme is that rather than seeking to implement a technology-based regulatory framework, the regulators are

looking to develop and implement a regulatory framework and requirements based on the intrinsic characteristics of the relevant activities or transactions and the risks arising from them. The Hong Kong Securities and Futures Commission (SFC) has issued various circulars, statements, position papers and guidelines to further clarify its regulatory approach with respect to virtual assets.

Characterisation as a security

Virtual assets are not regulated instruments by default but, depending on their terms and features, such virtual assets and related activities may be treated as a form of regulated instrument or service.

Where virtual assets fall under the definition of “securities” or “futures contracts” under the Securities and Futures Ordinance (SFO), such assets and related activities would fall within the SFC’s ambit. In this respect security tokens are generally regulated in the same way as other types of securities with similar substantive characteristics. The SFC considers virtual assets as a digital representation of value. STOs are typically structured to have the features of traditional securities offerings, but involve digital representations of the ownership of assets or economic rights utilising DLT or other digital infrastructure.

Firms offering security tokens in Hong Kong will therefore need to consider and ensure they comply with the product authorisation and licensing requirements under the SFO, just as they would when offering other types of securities.

Service providers involved in an STO would also need to consider carefully the nature and features of the tokens being offered in order to determine whether or not the tokens would be categorised as securities or another type of regulated instrument. Depending on the legal categorisation of the tokens and the particular services offered by the provider, service providers may also trigger regulatory licensing requirements.

Changing approach to the regulation of virtual assets

As has been seen with other securities regulators in major jurisdictions, the SFC’s initial approach was to clarify how virtual assets and some specific activities involving these assets would fall under its

existing regulatory regime. This approach requires the classification of each and every token based on its terms and features, which may evolve over time. In this regard, the SFC has published a number of statements and circulars clarifying its regulatory stance.

The SFC's approach has evolved to specifically bring some virtual asset activities in which the investing public is involved into its regulatory net under its existing powers.

Virtual asset portfolio managers and fund distributors

The first aspect of this approach tackles the management and distribution of funds which invest wholly or partially in virtual assets (whether or not being securities). SFC-licensed portfolio managers which intend to invest more than 10% of a mixed portfolio in virtual assets will need to observe the additional requirements as part of their licensing conditions. The SFC also set out the expected standards for licensed corporations which distribute virtual asset funds. The combined effect of these measures is that investor interests will be protected either at the fund management level or at the distribution level, or both.

The SFC has subsequently developed a set of standard terms and conditions for virtual asset portfolio managers in the "Proforma Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets", issued in October 2019. These terms and conditions are principles-based and should generally be appropriate to be imposed on virtual asset portfolio managers as licensing conditions, subject to minor variations and elaborations depending on the business model of the individual virtual asset portfolio manager. Some of the key terms and conditions that a virtual asset fund manager should comply with include: (i) it should only allow professional investors to invest in the virtual asset fund; (ii) it should take all reasonable measures to ensure compliance with all applicable legal and regulatory requirements; and (iii) it should provide the fund and fund investors with adequate information about its business and financial conditions.

Virtual asset trading platforms

The second aspect tackles centralised virtual asset trading platforms. The SFC proposed the initial regulatory framework in its Statement on regulatory framework for virtual asset portfolio managers, fund distributors and trading platform operators in November 2018. The SFC subsequently issued Position Paper: Regulation of Virtual Asset Trading Platforms in November 2019, which provided further clarity on the regulatory framework covering virtual asset trading platforms. The regulatory framework targets centralised virtual asset trading platform operating in Hong Kong which trade virtual assets including at least one security token. In the initial exploratory stage, an interested virtual asset trading platform operator will be placed in the SFC Regulatory Sandbox. The SFC would discuss its expected regulatory standards with the platform operator and observe the live operations in light of these standards. Once the platform operator obtains the relevant licences, it will be moved to the next stage of the SFC Regulatory Sandbox. This would typically mean more frequent reporting, monitoring and reviews. After a minimum 12-month period, the platform operator may apply to the SFC for removal or variation of the licensing conditions and exit the SFC Regulatory Sandbox.

JAPAN

In Japan, the Financial Instruments and Exchange Act (the Japanese securities act or FIEA) was amended in 2019 to regulate STOs in an attempt to facilitate capital formation in this manner while protecting investors. The amendment came into force in May 2020.

Characterisation as a security

Under the amendment to the FIEA, tokens representing (i) a conventional class of financial assets listed as Type I Securities under the FIEA (such as shares and bonds) or (ii) an interest in a collective investment scheme would be deemed to be "securities".

Tokens representing a conventional class of financial assets

The amendment to the FIEA introduced a new private placement framework for the situation where a conventional class of financial assets (i.e. Type I Securities) is

recorded and transferable electronically by means of blockchain or DLT. The tokens representing such electronically recorded and transferable securities may be offered for sale without registration if the tokens are, in the primary market, offered only to qualified institutional investors (QIIs) or to a small number (fewer than 50) of investors, and a technological restriction is implemented to limit transfers in the secondary market. Such restriction is that, for example, (i) only QIIs can acquire the tokens or (ii) a transferor can only transfer the tokens it holds all together to one transferee. A person who visits the website on which an STO is announced or reported could be deemed as an offeree of the STO, and therefore, in practice, it will be important to limit the persons with access to any marketing website to ensure that applicable restrictions are complied with when conducting a private STO without registration.

A Type I Financial Instruments Business Operator (FIBO) licence will be necessary to conduct an STO (whether it is private or public) of tokens representing a conventional class of financial assets and to act as broker of token sales.

Tokens representing an interest in collective investment scheme

The legal treatment of tokens representing an interest in a collective investment scheme differs depending on whether certain technological restrictions on transfer apply or not.

Without a satisfactory technological restriction that makes (i) the tokens capable of transfer only to QIIs or certain experienced investors and (ii) each transfer of tokens require an offer by the transferor and consent from the issuer, the tokens representing an interest in a collective investment scheme will qualify as “FIEA Security Tokens” and will be regulated in the same manner as tokens representing a conventional class of financial assets as explained above.

However, satisfaction of the technological restriction conditions above will mean the tokens are not classified or regulated as “FIEA Security Tokens”, which means that they can be offered and sold more easily. The marketing of those tokens must be handled by a Type II FIBO licensed entity (which is regulated to a

lesser extent than a Type I FIBO licensed entity). Or, if the investors to whom the tokens are marketed are limited to a group comprised of at least one QII and fewer than 50 experienced investors, the issuer of the tokens may seek to rely on the FIEA Article 63 exemption from the Type II FIBO licensing requirement to conduct the marketing of those tokens. In terms of the management of the funds raised by way of an offering of these tokens, the issuer must be registered as an Investment Manager, otherwise, the issuer would need to rely on the FIEA Article 63 exemption for investment management license.

Other regulatory considerations

If you design the financial asset that the tokens represent so that it does not fall within any of the definitions of Type I Securities or interest in a collective investment scheme, the tokens may be able to be sold without these regulatory constraints under the FIEA. This is because the definition of Type I Securities is provided by means of a limited list of specific instruments and does not include a catch-all category to capture instruments that do not fall within any of the specific instruments but have the general nature of securities.

However, such tokens might fall within the definition of cryptoassets under the Japanese Payment Services Act, which imposes registration requirements for dealers of cryptoassets. Therefore, in determining your strategy in Japan, you must consider not only the definitions of Type I Securities and a collective investment scheme under the FIEA but also the definition of cryptoassets under the Payment Services Act.

THE PEOPLE'S REPUBLIC OF CHINA (PRC)

PRC regulators do not particularly distinguish between ICO and STO and may use these terms synonymously. In 2017 China imposed a comprehensive ban on ICOs and similar token offerings, characterising these activities as illegal fundraising or illegal securities offering. A general understanding thus is that STOs, like ICOs, are illegal and prohibited in China.

SINGAPORE

In Singapore, there is no specific regulatory regime applicable to security

tokens. Security tokens are generally regulated in the same way as other types of traditional securities. In this respect, the Singapore regulatory regime is technology-neutral.

Characterisation as a security

The Monetary Authority of Singapore (MAS) considers there to be three main types of digital tokens – securities tokens, payment tokens and utility tokens – and has published guidance on digital token offerings. In that guidance, the MAS has expressly stated that offers of digital tokens may be regulated if the digital tokens are “capital markets products” under the Securities and Futures Act (Cap. 289) (SFA). The term “capital markets products” encompasses “securities”.

In determining whether a security token is a type of “security” and in turn, a type of “capital markets product”, the MAS would examine the structure and characteristics of, including the rights attached to, the security token.

Generally, instruments conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership, are regarded as “securities”. As such, security tokens that confer or represent an ownership interest in a corporation, partnership or limited liability partnership, may be regarded as “securities” under the SFA.

Both primary and secondary offers of securities must comply with the offering requirements under Part XIII of the SFA, unless an exemption applies. The provisions of Part XIII of the SFA require that an offer of securities be made in or accompanied by an offering document (i.e. prospectus and/or product highlights sheet) that is prepared in accordance with the SFA and lodged (and, in the case of a prospectus, registered) with the MAS.

Licence requirements

Additionally, intermediaries who facilitate offers of security tokens should note the following:

a) a person who operates a platform on which one or more offerors of security tokens may make primary offers or issues of security tokens (Primary Platform) may be regarded as carrying

on business in one or more regulated activities under the SFA. This, in turn, triggers a requirement to hold a capital markets services licence, unless an exemption applies;

b) a person who operates a platform on which security tokens are traded (Trading Platform) may be regarded as establishing or operating an organised market, and as such, may need to be approved by the MAS as an approved exchange or recognised by the MAS as a recognised market operator; and

c) a person who provides any financial advice in respect of any security token that is an investment product, 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, under the Financial Advisers Act (FAA).

Intermediaries subject to MAS’s supervision are typically required to comply with MAS’s rules on anti-money laundering and counter financing of terrorism.

A person who operates a Primary Platform or Trading Platform partly in and partly outside of Singapore, or outside of Singapore but the activities of which have a substantial and reasonably foreseeable effect in Singapore, may nevertheless trigger the requirements under the SFA due to its extra-territorial provisions.

Likewise, the FAA also has extra-territorial provisions. A person who is outside of Singapore and engages in any activity or conduct that is intended to or likely to induce the public in Singapore to use any financial advisory service provided by the person, is deemed to be acting as a financial adviser in Singapore.

While a security token is generally distinct from a payment token, it should be noted that tokens which are structured to function as a medium of exchange as payment for goods or services may be regarded as a type of digital payment token. Digital payment token services are regulated under the Payment Services Act 2019 (PS Act). A person who carries on a business of dealing in digital payment tokens or facilitating the exchange of digital payment tokens triggers the licensing requirement under the PS Act, unless an exemption applies.

Global regulation of STOs

This report is the second of a series of reports published by Clifford Chance on the global regulation of STOs.

[Click here for the first report in the series: Security Token Offerings - a European perspective on regulation.](#)



GLOSSARY

AFSL	Australian Financial Services Licence
ASIC	Australian Securities and Investments Commission
ASIC Act	Australian Securities and Investments Commission Act 2001 (Cth)
China or the PRC	People's Republic of China, exclusive of Hong Kong, Macau and Taiwan
Corporations Act	Australian Corporations Act 2001 (Cth)
ERS	Australian Enhanced Regulatory Sandbox
FAA	Singapore Financial Advisers Act (Cap. 110)
FIEA	Japanese Financial Instruments and Exchange Act
FIBO	Japanese Financial Instruments Business Operator under the FIEA
ICO	Initial Coin Offering
MAS	Monetary Authority of Singapore
PS Act	Singapore Payment Services Act 2019
QII	Qualified institutional investors under the FIEA
SFA	Singapore Securities and Futures Act (Cap. 289)
SFC	Hong Kong Securities and Futures Commission
SFC Position Paper	The position paper on "Regulation on virtual asset trading platforms" issued by the SFC on 6 November 2019
SFO	Hong Kong Securities and Futures Ordinance (Cap. 571)
STO	Security Token Offering

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Fintech Guide

This comprehensive online guide will provide you with the information you need on global regulatory initiatives and legislative developments, including the latest developments on global stablecoins such as Facebook's Libra, as well as access to our comprehensive range of market-leading thought leadership articles, events and presentations on market developments.

 financialmarketstoolkit.cliffordchance.com/fintech


Events and value-added services


As well as offering our clients tailored workshops on a range of topics including fintech M&A, digital assets including central bank digital currencies and stablecoins, and the fintech regulatory outlook, we regularly host fintech-related seminars, educational and networking events open to a wide audience. We regularly brief boards and senior personnel on strategic tech opportunities, risks and challenges for financial services and tech companies.

For more information on Clifford Chance's global fintech capability and our value-add resources, or to be added to our weekly global fintech regulatory round-up, please email fintech@cliffordchance.com

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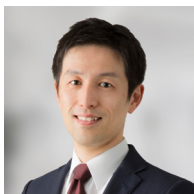
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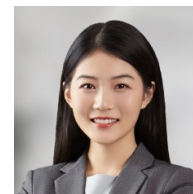
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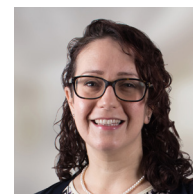
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C L I F F O R D

C H A N C E

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