

Legal Opinion

CONFIDENTIAL

Token Regulation in Singapore (Analysis of TTcoin token regulation under the chapter 289 of "SFA")

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Token issuance analysis in accordance with Singapore law regulation

This document provides information in relation to the token regulation under the Singapore law. The client has been interested in the legal opinion regarding whether the token described in the TTcoin White Paper can be considered as a capital market product under the chapter 289 of the Singapore Securities and Futures Act (SFA). The document includes the legal analysis of the last updated legislation regarding the token regulation in Singapore as well as the legal summary regarding the applicability of the SFA regulation to the TTcoin token.

Under section 2(1) of the SFA, “capital markets products” includes any securities (which includes shares, debentures and units in a business trust), units in a collective investment scheme, derivatives contracts (which includes derivatives of shares, debentures and units in a business trust), spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as MAS may prescribe as capital markets products. Monetary authority of Singapore (MAS) issued a Guide to Digital Token Offerings which is aimed to provide a general guidance on the application of the relevant laws in relation to offers or issues of digital tokens in Singapore. In its last update from 26 May 2020, MAS has provided broader classification of the digital tokens in its paragraph 2.3 :

For instance, a digital token may constitute –

1) **a share**¹, 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 se².

2) **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;

3) **a unit in a business trust**³ , where it confers or represents ownership interest in the trust property of a business trust;

¹ 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.”

² Halsbury Laws of Singapore vol 6, (LexisNexis, 2010) at paragraph 70.343

³ 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.”

4) a **securities-based derivatives contract**⁴, which includes any derivatives contract of which, the underlying thing is a share, debenture or unit in a business trust;

5) a **unit in a collective investment scheme**⁵ where it represents a right or interest in a CIS, or an option to acquire a right or interest in a CIS.

It has to be noted that the aforementioned classification of tokens that concludes paragraph 2.3 - is not exhaustive.

Features of TTcoin token that could be recognized as a “security” in accordance with the SFA regulation.

Please find the definition of the aforementioned terms in accordance with the SFA:

“securities” means —

(a) shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership;

(b) debentures; or

(c) any other product or class of products as may be prescribed,

but does not include:

(i) any unit of a collective investment scheme;

(ii) any bill of exchange;

(iii) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or

(iv) such other product or class of products as may be prescribed

⁴ Under section 2(1) of the SFA, “securities-based derivatives contract” includes any derivatives contracts of which the underlying thing or any of the underlying things is a security or securities index, but does not include any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 341 of the SFA. Please see section 2(1) of the SFA for the definition of “derivatives contract”

⁵ Under section 2(1) of the SFA, a “collective investment scheme” includes an arrangement in respect of any property:

A) Under which the participants do not have day-to-day control over management of the property, whether or not the participants have the right to be consulted or to give directions in respect of such management; b) Under which either or both of the following characteristics are present: (i) the property is managed as a whole by or on behalf of a manager; (ii) the contributions of the participants, and the profits or income out of which payments are to be made to the participants, are pooled; and c) The effect (or the purpose, purported purpose or purported 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; or to receive sums paid out of such profits,

“share” - has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

i.e. “share” means share in the share capital of a corporation and includes stock except where a distinction between stocks and shares is expressed or implied;

Based on the provided information from the TTcoin White Paper, our team has highlighted some of the features that might result in qualification of the TTcoin token as a security.

1. According to the TTcoin company plans, described at the page 6 of the White Paper, it is mentioned that users may acquire a part in different projects like Football team or Joint Stock Company etc which could be dependant on persons investing in TTcoin. That provision itself contributes to the possible qualification of the token as a security as the comparison to a company stock raises questions regarding the “utility nature” of the TTcoin token.

2. Another provision that might be seen as potentially non-compliant with the utility nature arises from the question whether the team has an opportunity to influence on the price of the token and according to the 5th page of White Paper 1 billion TTcoins are reserved for the team and another 2 billions of TTcoin are locked and burned, which allows us to say that price can be dependant on the decision of the team.

Features of TTcoin token that could be recognized as “ capital market products”

As it was described before, a token might not fall into the category of a “security”, however it still will be regarded as “a capital market product”, which consequently means that the token would be regulated by the SFA provisions as well.

Definition of the aforementioned terms in accordance with the SFA :

“unit” -

(a) 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;
and

(b) in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“securities-based derivatives contract” -

means any derivatives contract of which the underlying thing or any of the underlying things is a security or a securities index, but does not include any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 341;

Based on the information provided by the TTcoin White Paper, our team has highlighted some areas that may consist risk factors in relation to the nature of the TTcoin token.

To start with, the TTcoin token provides rights that can possibly lead to influencing the development of the TTcoin future projects.

Such provision might be seen as a partially complying one with the classification 2.3 of the MAS. More specifically, depending on the structure (if the company was registered in a form of a trust) it could be seen as a **unit in a business trust**, if the obtainment of the token represents the ownership in the project. It also could be seen as a matching requirement of the **unit in a collective investment scheme**.

Features of TTcoin token that could fall into the licensing requirements under the Singapore law.

Page 6 of the TTcoin White Paper includes information regarding the project named TTshop, where there is a possibility to pay in TTcoin. In relation to the TTcoin, such features might be recognised as e-money, thus will have to be licensed in accordance with the MAS regulations.

According to the Consultation On The Payment Services act 2019, e-money is defined as any electronically stored monetary value that:

- (a) is denominated in any currency or pegged by its issuer to any currency;
- (b) has been paid in advance to enable the making of payment transactions through the use of a payment account;
- (c) is accepted by a person other than its issuer; and
- (d) represents a claim on its issuer,

While it was not possible to do a more thorough analysis of the TTcoin based on the information provided, the team has come to a conclusion that the client should take into consideration the aforementioned features of the e-money, as depending on the scope of the TTcoin's functions, it can be recognized as e-money, and, therefore, will have to be licensed by EMI or other appropriate type of license.

Rules of the securities token offering

Monetary Authority of Singapore has also provided certain definitions regarding the participants and intermediaries that facilitate offers and issues of digital tokens. Thus, it is important to provide the classification of offers and intermediaries which are listed in the latest MAS regulation.

Offers of digital tokens which constitute securities⁶, securities-based derivatives contracts or units in a CIS are subject to the same regulatory regime under Part XIII of the SFA, as offers of securities, or securities-based derivatives contracts or units in a CIS⁷ respectively made through traditional means.

The paragraph 2.5 of the MAS guide provides that A person may only make an offer of digital tokens which constitute securities, securities-based derivatives contracts or units in a CIS ("Offer"), if the Offer complies with the requirements under Part XIII of the SFA⁸. 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").

⁶ Includes shares, debentures and units in a business trust. Please see section 2(1) of the SFA for the definition of "securities" under the SFA.

⁷ 4 Division 2 of Part XIII of the SFA

⁸ Please see sections 240 and 296 of the SFA.

In addition, where an offer is made in relation to units in a CIS, the CIS is subject to Authorization or recognition requirements (“Authorization / Recognition Requirements”). An authorized CIS or a recognized CIS under the SFA must comply with investment restrictions and business conduct requirements.

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.

An Offer may nevertheless be exempt from the Prospectus Requirements and, in the case of units in a CIS, the Authorization/ Recognition Requirements, where, among others –

2.7.1 the Offer is a **small (personal) offer**⁹ that does not exceed S\$5 million (or its equivalent in a foreign currency) within any 12-month period, subject to certain conditions;

2.7.2 the Offer is a **private placement** offer made to no more than 50 persons within any 12-month period, subject to certain conditions;

2.7.3 the Offer is made to **institutional investors** only; or

2.7.4 the Offer is made to **accredited investors**, subject to certain conditions. The exemptions for a small (personal) offer, a private placement offer and an offer made to accredited investors, are respectively subject to certain conditions which includes advertising restrictions.

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⁹ 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.

SUMMARY

Taking into the consideration all the information that has been provided, our team has come to a following conclusion of the TTcoin token current status under the SFA:

1. Based on the current TTcoin White Paper, the TTcoin token has characteristics of a security. Our report includes the information of which aspects of the token's nature might qualify as one of the capital market products. Our team came to a conclusion that the token's nature goes beyond just utility, which means that it requires to be regulated under the provisions of the SFA. It is important to mention that even if the TTcoin token might not fall under the definition of the "security" which is expressed under the SFA, it can still be recognized as a "capital market product" (a securities-based derivatives product, a unit in a collective investment scheme and etc) .

2. Our team has come to a conclusion that TTcoin might have features that could potentially lead to its qualification as e-money under certain circumstances.

3. Our team came to a conclusion that due to features of reserving options that can result in influence on token price which are described in the TTcoin White Paper, the token might be seen as security .



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