

CRYPTOCURRENCIES, EXCHANGES, AND INITIAL COIN OFFERINGS: AN INSIGHT INTO ASEAN'S REGULATORY ENVIRONMENT

Initial coin offerings (ICOs) are gaining further momentum as an alternative form of crowdfunding globally. Yap Lian Seng, Managing Partner of ZICO Insights Law LLC (a member of ZICO Law) together with Senior Associate, Heng Jun Meng, share their views on the emergence of cryptocurrencies, exchanges, and ICOs, and the regulatory perspective in ASEAN.

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In our publication in November 2017, we noted the rising popularity of initial coin offerings (ICOs) and [shared our insights](#)¹ on the regulatory stances of key jurisdictions. The ICO market remains buoyant in 2018. According to a report prepared by PwC in collaboration with the Swiss Crypto Valley Association, as at June 2018, more than USD13 billion has been raised from ICOs around the world – almost double the total amount raised in the entire 2017².

Since June 2018, more than USD1 billion has been raised from ICOs launched from Singapore, which retains its status as one

of the most popular jurisdictions in the world to launch ICOs³. The emergence of cryptocurrency and ICOs has not gone unnoticed in many other ASEAN countries. As though mirroring the diversity within the ASEAN region, the regulatory approach varies significantly from one ASEAN country to another.

In this publication, we provide a snapshot of the regulatory environment for cryptocurrencies, ICOs, and exchanges in 9⁴ out of 10 ASEAN countries.

REGULATORY SNAPSHOT IN ASEAN



Singapore

The Monetary Authority of Singapore (MAS) does not regulate virtual currencies as they are not considered to be securities or legal tender. In November 2017, the MAS published a guide to digital token offerings, where it expressed that it regulates offers or issues of digital tokens that are capital market products under the Securities and Futures Act (SFA). If a digital token falls within the definition of securities under the SFA, issuers of such a token must lodge and register a prospectus with the MAS prior to the offer of such tokens, unless otherwise exempted. In the same month, the MAS issued a second consultation paper on its proposed payment services bill that regulates, amongst others, businesses that undertake virtual currency services (such as exchange of virtual currency to fiat currency (or vice versa)). For more details, please see our updates on the [guide to digital token offering](#)⁵ and [proposed payment services bill](#)⁶.



Virtual currency intermediaries are subject to regulations relating to anti-money laundering and financing of terrorist activities. Exchanges that facilitate trading of digital tokens that are securities or futures contracts must seek authorisation as an approved exchange or recognised market operator by MAS. In May 2018, the MAS issued a consultation paper on review of the recognised market operators scheme, to address the emergence of trading platforms that allow peer-to-peer trading without the involvement of intermediaries.

On 24 May 2018, the MAS announced that it had warned eight digital token exchanges not to facilitate trading in digital tokens that are securities or futures contracts without authorisation. It had also directed that an ICO stop its sale of tokens in Singapore as the tokens were securities, yet the offer of tokens was made without a MAS-registered prospectus.



Brunei

In late 2017, the Monetary Authority of Brunei (Autoriti Monetari Brunei Darussalam) (AMBD) issued a press release reminding the public that cryptocurrencies are neither legal tender in Brunei Darussalam nor regulated by the AMBD. The press release also highlighted that members of the public dealing with cryptocurrencies are not protected under the laws administered by the AMBD. Recently, the AMBD added that activities surrounding cryptocurrencies could be regulated if they fall under activities regulated by the AMBD. Examples of such activities include taking of deposits, cross-border fund remittance, foreign exchange services, and the issuance of securities.

 <p>Cambodia</p>	<p>The National Bank of Cambodia, the Securities and Exchange Commission of Cambodia, and the General-Commissariat of National Police released a joint statement in May 2018, clarifying that the propagation, circulation, buying, selling, trading, and settlement of cryptocurrencies without obtaining a licence from competent authorities are illegal activities. The joint statement also highlighted several potential risks in the use of cryptocurrency, including the lack of customer protection for the use of cryptocurrency. In March 2018, local media outlet, The Phnom Penh Post, reported that representatives of the National Bank of Cambodia and the Securities and Exchange Commission of Cambodia denied that the government had plans to develop a national cryptocurrency.</p>
 <p>Indonesia</p>	<p>Bank Indonesia (BI) - the central bank of Indonesia - refers to virtual currency as digital money issued by a party other than the monetary authority obtained by way of mining, purchase, or transfer of reward, but excludes e-money. In January 2018, BI affirmed that virtual currency is not recognised as a legitimate payment instrument and is thus prohibited to be used as a means of payment in Indonesia. BI also banned the use of cryptocurrencies by fintech companies involved in payment systems. BI warned all parties not to sell, buy, or trade virtual currency.</p> <p>In June 2018, the Commodity Futures Trading Supervisory Agency (Badan Pengawas Perdagangan Berjangka Komoditi (BAPPEBTI)) expressed that it views cryptocurrencies as commodities that may be traded on futures exchanges. Thus far, no official regulation on cryptocurrencies has been issued. It was reported in the media in January 2018, that BI is working with the National Police to clamp down on Bitcoin transactions in Bali.</p>
 <p>Malaysia</p>	<p>The central bank of Malaysia, Bank Negara Malaysia (BNM), does not recognise digital currencies as legal tender. In January 2018, the Securities Commission Malaysia (SC) and BNM warned that requirements under securities laws may apply to ICOs or the offering of digital tokens in exchange for any form of payment. In addition, regulated activities such as deposit taking, foreign exchange administration, and remittances can only be undertaken with the requisite authorisation from BNM.</p> <p>On 9 January 2018, the SC issued a cease and desist order to CopyCash Foundation after the SC determined that there was a reasonable likelihood that disclosures in the whitepaper and representations to potential investors contravene relevant requirements under securities laws.</p> <p>In an effort to address transparency concerns in activities dealing with digital currencies, BNM issued an Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Policy for Digital Currencies in February 2018. BNM has also published a list of reporting institutions dealing with digital currencies declared to BNM, including names of the compliance officers and shareholders, and the type of exchange activities undertaken.</p>
 <p>Myanmar</p>	<p>In early 2018, the Ministry of Home Affairs warned that cryptocurrencies were unstable and discouraged investment and trading of cryptocurrencies. It noted that there are promoters actively attracting people to invest in cryptocurrency platforms, with many utilising multi-level marketing strategies to attract new investors. The statement also added that promoters are targeting investors who have no experience or understanding on cryptocurrencies.</p>



Philippines

The Central Bank of Philippines (BSP) refers to virtual currency as any type of digital unit that is used as a medium of exchange or a form of digitally stored value created by agreement within the community of virtual currency users. Virtual currencies are neither issued nor guaranteed by any jurisdiction, and are not legal tender. Virtual currency exchanges that facilitate the conversion of fiat currency to virtual currency (or vice versa) are required to be registered as remittance and transfer companies. Such exchanges are also required to put in place AML/CFT controls. In December 2017, the BSP emphasised that it does not endorse virtual currencies as legal tender, store of value, or an investment vehicle. That said, the BSP Governor has acknowledged the potential of cryptocurrencies, particularly in the realm of payments and remittance.

In January 2018, the Securities and Exchange Commission of Philippines issued a cease and desist order against four related companies running ICOs, as the tokens, which were considered to be securities, were offered for sale without the necessary licence. Generally, the sale of securities can only be undertaken after the requisite registration statement is duly filed and approved by the SEC, and the corresponding licence of sell securities is issued.

In early August 2018, the Securities and Exchange Commission of Philippines released, for public comment, the proposed rules to govern the registration of ICOs. The proposed rules primarily govern the conduct of ICOs where security tokens are issued by entities organised in Philippines, and entities conducting ICOs targeting Filipinos. All such entities must submit an initial assessment request to the SEC no later than 90 days before the start of the pre-sale period, for the SEC to determine whether the token is a security. In the event the tokens are considered to be security tokens, the issuer must register the security tokens unless an exemption from registration applies. If the issuer conducting an ICO of security tokens is a foreign corporation, it is required to maintain a branch office in Philippines. The proposed rules require issuers of security tokens to keep the proceeds under escrow with a reputable independent escrow agent. It should be noted that entities that conducted an ICO prior to the effective date of the proposed rules have 3 months to submit the initial assessment request to the SEC.



Thailand

In February 2018, the Bank of Thailand - the central bank of Thailand - expressed that cryptocurrencies were not legal tender and banned the following cryptocurrency-related activities: (a) investing or trading in cryptocurrency; (b) exchanging cryptocurrencies; (c) creating platforms for cryptocurrency trading; (d) allowing clients to use credit cards to buy cryptocurrencies; and (e) advising customers on cryptocurrency investing and trading.

A couple of months later, the Securities and Exchange Commission of Thailand (SEC) announced that the Digital Asset Business Decree, which was enacted to regulate businesses undertaking activities relating to digital assets, had become effective on 14 May 2018. Under the Decree, digital assets include cryptocurrencies, digital tokens, and any other electronic data unit, as specified by the SEC. The Decree sets out regulations for the offering of digital tokens and undertaking of digital asset businesses:

- All offers of newly issued digital tokens to the public can only be conducted by limited companies or public limited companies established in Thailand. Before commencing the offer of digital tokens, the issuer must have obtained approval and filed the registration statement and draft prospectus with the SEC. In addition, the offering must be carried out through an approved ICO Portal recognised by the SEC Board. Issuers are also subject to ongoing compliance requirements.
- Entities wishing to operate a digital asset business (such as exchange, brokerage, and dealing) must receive approval from the Minister of Finance and meet the requirements of the SEC. Such requirements include having adequate capital and instituting measures to address cybersecurity issues. Preventive measures against money laundering should also be in place. All entities that were undertaking digital asset businesses prior to 14 May 2018 and intend to continue their business operations must file an application with the SEC by 14 August 2018.

Any offer of digital tokens or operation of digital asset businesses without approval is punishable under the Decree.

The SEC is in the midst of drafting regulations to provide clarity and appropriate implementation of the Decree. The proposed regulations specify the qualifications of ICO portals, which include having a registered capital of at least THB5 million and providing a suitability test for retail investors. SEC is also reviewing the eligibility criteria for retail investors, such as a maximum investment amount of THB300,000 for each offering.

The SEC announced in late July 2018, that it has commenced approval of digital asset licensing and interested parties may apply for licences.



Vietnam

As early as 2014, Vietnam's central bank - the State Bank of Vietnam (SBV) - considered Bitcoin and other virtual currencies as neither money nor a form of legal payment in Vietnam. In 2017, the SBV officially issued a ban on the use of virtual currencies as a mode of payment. Only non-cash payments authorised by the SBV, such as credit cards and cheques, may be used for payment purposes. Those who supply, issue, or use illegal means of payments may face fines between VND150 million and VND200 million.

In April 2018, the Prime Minister of Vietnam signed a directive to tighten the management of activities relating to Bitcoin and virtual currencies. In a joint governmental effort, various government bodies were instructed to restrict the use of virtual currencies. The SBV was directed to instruct intermediary payment services not to perform transactions related to virtual currency trading, while The Ministry of Justice was tasked to coordinate with other ministries to complete the legal framework on management of virtual currencies and propose measures on ICO activities.

Regulatory authorities have undertaken a series of actions to adhere to the Prime Minister's directive. In July 2018, the SBV agreed with the proposal of the Ministry of Industry and Trade to suspend the import of cryptocurrency mining machines, a move designed to reduce the presence and use of cryptocurrencies in Vietnam. The State Securities Commission recently banned public companies, securities companies, fund management companies, and securities investment funds from being involved in activities related to cryptocurrencies.

OUR COMMENTS

As can be observed from the above summaries, each ASEAN country takes a different regulatory approach towards activities relating to cryptocurrencies, exchanges, and ICOs. Notably, Thailand and Philippines have taken the initiative to put in place laws applying specifically to ICOs. Given that the popularity of ICOs show little signs of abating, we anticipate that regulators in ASEAN will continue to monitor the developments

and gradually provide greater guidance on the regulatory treatment of this new form of capital-raising, whether through specific laws, guidelines, or otherwise. Issuers should remain cautious of the varying regulatory attitudes and legal pitfalls that exist in countries where it desires to undertake an ICO, particularly if the tokens issued are not intended to be securities.

¹ Yap Lian Seng, Heng Jun Meng and Lee Chongshen, 'The Rising Popularity of Initial Coin Offerings: Global Snapshot of Regulators' Perspectives' (2017) <[zico.group/publication/rising-popularity-initial-coin-offerings-global-snapshot-regulators-perspectives/](https://www.zicogroup.com/publication/rising-popularity-initial-coin-offerings-global-snapshot-regulators-perspectives/)> accessed 15 August 2018

² Diemers, Arslanian, McNamara, Dobrauz, Wohlgemuth, 'Initial Coin Offerings: A strategic perspective' (2018) <https://cryptovalley.swiss/wp-content/uploads/20180628_PwC-S-CVA-ICO-Report_EN.pdf> accessed 15 August 2018

³ See above.

⁴ Excludes Laos as there is limited information on the regulatory environment regarding cryptocurrencies, exchanges, and ICOs.

⁵ Yap Lian Seng, Heng Jun Meng and Lee Chongshen, 'MAS issues guide to Digital Token Offerings' (2017) <www.zicolaw.com/legal-alert-singapore-mas-issues-guide-digital-token-offerings/> accessed 15 August 2018

⁶ Yap Lian Seng, Heng Jun Meng, 'Proposed Regulation of Virtual Currency Services' (2018) <[zico.group/wp-content/uploads/2018/04/ZICO-Law-Singapore_Legal-Alert_Proposed-Regulation-of-Virtual-Currency-Services.pdf](https://www.zicogroup.com/wp-content/uploads/2018/04/ZICO-Law-Singapore_Legal-Alert_Proposed-Regulation-of-Virtual-Currency-Services.pdf)> accessed 15 August 2018

If you have any questions or require any additional information, you may contact the following person or the ZICO Law partner you usually deal with.



Yap Lian Seng
Managing Director
lian.seng.yap@zicolaw.com
t. +65 6904 4184

Lian Seng has had more than 22 years of professional experience.

His practice encompasses mergers and acquisition (including schemes of arrangements, takeovers, competitive sale processes and acquisition and disposal of shares and assets), corporate finance, and restructuring work. Lian Seng is recognised for his strong deal-making skills and has demonstrated client skills and technical ability on a number of major transactions in Singapore.

Lian Seng has been involved in probably the highest number of successful reverse takeover transactions in Singapore. He has also successfully pioneered other transaction structures to achieve similar outcomes in the Singapore market.

Lian Seng was named a Leading Lawyer in the Capital Markets and Corporate Finance areas in publications such as AsiaLaw Leading Lawyers and was a lead counsel in the restructuring of China Aviation Oil (Singapore) Corporation Limited which won the "Singapore Restructuring Deal of the Year" award at the Asian Legal Business Awards.



Heng Jun Meng
Senior Associate
jun.meng.heng@zicolaw.com
t. +65 6908 1294

Jun Meng advises clients in a wide variety of international cross-border mergers and acquisitions, capital markets, corporate, and commercial transactions. His experience includes reverse takeover transactions, corporate finance matters, joint ventures and pre-IPO private equity investments. Jun Meng, who is fluent in Mandarin, also advises on corporate governance and compliance matters.

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