

THE RISING POPULARITY  
OF INITIAL COIN OFFERINGS:  
**GLOBAL SNAPSHOT  
OF REGULATORS'  
PERSPECTIVES**

Initial coin offerings are currently all the rage. In this article Yap Lian Seng, Managing Partner of ZICO Insights Law LLC (a member of ZICO Law) together with Heng Jun Meng and Lee Chongshen share their insights on global regulatory stances towards initial coin offerings.

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## WHAT ARE INITIAL COIN OFFERINGS?

An initial coin offering or ICO is a new method of capital raising used mainly by tech start-ups where new blockchain-enabled digital tokens are created and offered for public sale. Digital tokens under an ICO will typically entitle holders to a right derived from the business of the issuer, be it the right to a profit and/or a right of use and would often also be listed and tradeable on a cryptocurrency exchange for fiat currency. Cryptocurrency exchange refers to platforms facilitating trading in digital tokens. Fiat currency refers to currency established by a government to be legal tender— e.g. US Dollar, Singapore Dollar.








Currently, as the majority of ICOs are carried out without being subject to the full rigour of securities laws applicable to initial public offerings, it is no surprise that globally, firms have raised more than USD1 billion via ICOs in the third quarter of 2017 alone<sup>1</sup>.

## HOW ARE REGULATORS REACTING TO THE RISE OF INITIAL COIN OFFERINGS?

Of late, the proliferation of ICOs has attracted the attention of regulators globally due to, among other things, concerns relating to fraudulent offerings, money laundering, terrorist financing and

a surge of speculative interests. The regulatory stance adopted by global financial hubs will play a major role in shaping the way ICOs are conducted as well as the features of digital tokens.

Country	Regulatory stance
 <b>US</b>	In July 2017, the US Securities and Exchange Commission (SEC) issued a report on its investigation into whether a token sale by a distributed autonomous organisation (DAO) violated US securities laws, applying a test laid down by the Supreme Court of US known as the Howey Test to determine whether the DAO tokens were an investment contract. The end result of the SEC report is that the DAO tokens are securities under US law and that many digital tokens are likely to be securities under US law <sup>2</sup> .
 <b>China</b>	In September 2017, the Chinese central bank outlawed ICOs. According to a statement from a group of seven agencies led by the People's Bank of China, ICOs are essentially a form of "unauthorised and illegal public fundraising, and are suspected of being involved in criminal activities such as illegal selling of tokens, illegal issuance of securities, illegal fundraising, financial fraud and pyramid schemes". The statement adds that fundraising activities through issuing tokens, including ICOs, have "disrupted the economic and financial order" <sup>3</sup> .
 <b>UK</b>	In a discussion paper published by the UK's Financial Conduct Authority (FCA) in April 2017, the FCA stipulated that rules that protect investors and stipulate what must be disclosed by an issuing company could apply to ICOs, depending on their structure. The FCA's discussion paper further reads: "Initial coin offerings have various parallels with Initial Public Offerings, private placement of securities, or crowd sales. Depending on how they are structured, they may, therefore, fall into the regulatory perimeter." A new discussion paper is slated to be published later in the year <sup>4</sup> .
 <b>Hong Kong</b>	In September 2017, the Hong Kong Securities and Futures Commission (SFC) issued a statement explaining that, depending on the facts and circumstances of an ICO (and any digital tokens that are offered or sold under it), it may be subject to the securities laws of Hong Kong. The SFC has made clear that where the digital tokens involved in an ICO fall under the definition of "securities," any party dealing in or advising on such digital tokens, or managing or marketing a fund investing in them and targeting the Hong Kong public, is required to be licensed by or registered with the SFC, irrespective of where the party is located <sup>5</sup> .

Country	Regulatory stance
 <b>Australia</b>	In September 2017, the Australian Securities and Investment Commission (ASIC) issued a guidance to explain how ICOs will be regulated within Australia's regulatory framework. Australia's approach is an amalgamation of a suite of regulations that might apply to public and private companies when they launch an initial public offering, raise funds from existing shareholders, or offer financial services, while encouraging innovation and the development of new financial business models <sup>6</sup> .
 <b>Japan</b>	In October 2017, the Financial Services Agency (FSA) of Japan issued a statement on the risks of ICOs and how existing laws may apply to ICOs. According to the statement, the Payment Services Act and/or the Financial Instruments and Exchange Act may apply to ICOs, depending on how the ICO is structured. In addition, if businesses involved in an ICO (such as businesses which provide exchange services of virtual currencies) are regulated under relevant laws, those businesses should comply with their obligations and registration requirements under the relevant laws <sup>7</sup> .
 <b>Singapore</b>	In August 2017, the Monetary Authority of Singapore (MAS) clarified that the offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under Singapore's securities law. Where digital tokens fall within the definition of "securities" under Singapore's securities law, issuers of such tokens would be required to lodge and register a prospectus with MAS prior to the offer of such tokens, unless exempted. Issuers or intermediaries of such tokens would also be subject to licensing requirements <sup>8</sup> .

This is an interesting space to watch, as regulators globally take different regulatory stances towards ICOs. Whilst some have banned ICOs outright (such as China and South Korea), others (such as US, UK, Japan, Australia and Singapore) seem to be studying the development and implications of ICOs globally to find middle ground between embracing fintech innovation and maintaining a healthy financial ecosystem.

ZICO Insights Law recently advised Singapore-incorporated HelloGold Foundation Limited in its USD8 million ICO – see [www.hellogold.org](http://www.hellogold.org) for further information.

<sup>1</sup> McSpadden, Kevin. "ICOs have raised a billion dollars since mid-August" e27 17 October 2017. Web. 26 October 2017.

<sup>2</sup> U.S. Securities and Exchange Commission "SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities". 25 July 2017. Web. 26 October 2017.

<sup>3</sup> The People's Bank of China "Public Notice of the PBC, CAC, MIIT, SAIC, CBRC, CSRC and CIRC on Preventing Risks of Fundraising through Coin Offering" 8 September 2017. Web. 26 October 2017

<sup>4</sup> Financial Conduct Authority. "Discussion Paper on distributed ledger technology" Discussion Paper DP17/3 April 2017. Web. 26 October 2017.

<sup>5</sup> Securities and Futures Commission "Statement on initial coin offerings" 5 September 2017. Web. 26 October 2017.

<sup>6</sup> Australian Securities and Investment Commission "Information sheet on initial coin offerings" Info Sheet 225 September 2017. Web. 26 October 2017.

<sup>7</sup> Japan Financial Services Agency "Initial Coin Offerings (ICOs) - User and business operator warning about the risks of ICOs" 27 October 2017. Web. 3 November 2017.

<sup>8</sup> Monetary Authority of Singapore "MAS clarifies regulatory position on the offer of digital tokens in Singapore" 1 August 2017. Web. 26 October 2017.

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