

MEMORANDUM

TO: File **DATE:** 2018-12-01

FROM: Ressos Legal Pte. Ltd. **MATTER:**

SUBJECT: How to do a Security Token Offering (STO) in Singapore

A. OVERVIEW**I. Security Token Offerings (“STOs”) and Tokenisation: Welcome to the brave new world of blockchain-based securities**

Tokenisation, the process of creating a digital token from an underlying asset such as shares in a company or a physical asset, is widely viewed as a fundamental game-changer for financial markets. A natural evolution of the traditional concept of securitisation, tokenisation creates a highly liquid, trillion-dollar market of tradeable digital securities. This is an unprecedented opportunity for companies wishing to raise funds.

Tokenisation implies the creation of a digital token. Both the terms Security Token Offering (“**STO**”) as well as Initial Coin Offering (“**ICO**”) describe token generation events (“**TGE**”). A TGE is the process of issuing of units on a blockchain by a company (“**Issuer**”). It is a specialised form of fundraising which often competes with venture capital and other forms of corporate finance. Conventionally, the term ICO is used for a TGE made in respect of utility tokens, whereas the term STO is used for a TGE made in respect of security tokens.

This memorandum describes how to do an STO in Singapore and covers key aspects such as the regulatory framework, legal and tax structuring considerations as well as the typical offering documentation to be prepared, Anti-Money Laundering (“**AML**”) compliance requirements, as well as the typical corporate structure. Please note that this memorandum is general in nature, must not be construed as legal advice and no reliance should be placed on any aspect of this memorandum when making any decisions. All Singapore law advice procured by Ressos is provided through duly licensed Singapore advocates and solicitors.

Should you, upon reading of this memorandum, require further information on how to structure an STO or ICO through Singapore, Hong Kong or offshore jurisdictions, please contact a partner of our firm to schedule an initial consultation. For a comprehensive analysis of the general regulatory framework for TGEs and how to do a (non-security token) ICO in Singapore, please refer to the Ressos memorandum “How to do an ICO in

Singapore”, which is available on www.SingaporeCO.com.

II. Definition and classes of digital tokens

The underlying technology of any TGE is blockchain, which is defined as *"a decentralised ledger that keeps a record of all transactions that take place across a peer-to-peer network. All online activities are organised into chunks of data named blocks, which are linked to one another forming a blockchain. Through the use of miners that monitor, verify and record the transactions, every party involved in that business network can witness and access a log of transactions."* Tokens can be issued on a variety of platforms, including for example Ethereum, Neo or Stellar.

Regardless of the blockchain platform which is used to create the relevant class of tokens, a digital token can constitute either a utility token or a security token. Whether it is one or the other depends on how the digital token is legally structured, i.e. which legal rights are attached to it. This is not a technical matter but purely a legal determination. In the case of a utility token, the rights attached to the token give it primarily utilitarian value, i.e. the token is a “consumable” and offers its user primarily access to a service (such as access to a blockchain-based ecosystem) or even a physical good. It does not have any direct financial interest attached to it. If it does (for example if the tokenholder is promised a profit share, interest payment or other form of investment value), the token is usually a security token. As a security, they fall within the ambit of the SECURITIES AND FUTURES ACT (CAP. 289) (the “SFA”) and are generally regulated by the Monetary Authority of Singapore (“MAS”). Utility tokens are not.

The level of regulation and the extent of associated compliance obligations depend primarily on the type of security chosen by the Issuer (for example whether it is a debenture or a collective investment scheme) and the classes of investors targeted. Naturally, Retail investors enjoy a higher level of protection under the law than accredited or institutional investors. The regulatory requirements will vary accordingly.

III. Why conduct a Security Token Offering?

Security token offerings can be viewed as a specialised form of corporate financing. In consideration for his payment to the Issuer, the investor receives a digital token which may be connected to a right to receive a dividend, a revenue share, a voting right, a license, a property right or a right to participate in the future performance of the Issuer. Subject to any contractual limitations, there are no restrictions on the part of the Issuer with regards to how the raised funds may be used. Since there is no dilution of equity, TGEs are an attractive alternative to venture capital and other traditional forms of equity financing.

But there is also a wider picture. 2017 has seen a substantial rise in TGE projects. Market standards and sound practices for token sales have evolved from obscure means of ICO-

crowdfunding (often positioned in grey areas of financial market regulation and sometimes triggering regulatory action). ICOs are today a legitimate form of corporate financing, and (despite the currently bearish market for cryptocurrencies) the industry continues to mature rapidly. Disrupting venture capital (either by token offerings or a combination of equity and token fundraising) in itself is a significant development. Taking securitisation to the next level by way of tokenising securities will change the financial markets in their entirety. Upon the emergence of security token exchanges and institutional-grade token custodian services, we will see the large mainstream financial institutions enter the crypto market on a global scale. We expect that by 2025 most securities will be tokenised. This will be certainly true for all securities which are currently publicly listed, since stock exchanges will be first movers adapting to the tokenisation trend. Tokenisation and STOs are the future, since without an STO there can be no security tokens.

IV. Are security tokens “coins” or cryptocurrency?

Every TGE involves the issue of proprietary digital tokens to investors or future project users. This makes a token a new asset class that (i) raises capital and (ii) has investment value (in the case of a security token) or utilitarian value as a consumable (in the case of a utility token). The term “coin” is often used synonymously with the term “token”. Tokens which are used as a means of exchange within a digital ecosystem or which are listed on a token exchange may be considered “cryptocurrency”. The use of the terms token, coin or cryptocurrency is arbitrary and does not imply whether a token is a utility token or security token. This is a question of the legal rights attached to it, i.e. of the legal terms and conditions governing the token sale.

V. How does an STO work?

To subscribe to tokens during an STO, the investor will pay fiat money or make a transfer of virtual currency to the Issuer. In consideration of his/her investment, tokens will be issued to the investor and transferred to his/her designated addresses or online wallet. It is possible for Issuers to list tokens on crypto exchanges and to thereby create a secondary market, subject to regulatory restrictions and any limitations imposed by the exchange.

VI. What is the typical corporate structure used to do an STO in Singapore?

A typical STO structure involves the incorporation of a token-issuing entity, usually in the form of a Singapore private limited company. This entity is used to raise funds by issuing a security token to investors and to subsequently disburse these monies within the framework laid down in the offering documentation (see below). STOs can be structured in a variety of ways. A tried and tested approach adopted by many clients is to raise funds by means of an STO, and to inject these funds into an underlying offshore investment fund structure (the “**Fund**”). In this structure, a token will represent an interest in the Fund.

The use of “foundation” entities (such as a company limited by guarantee) in the context of an STO is possible but usually not advisable for administrative reasons and increased challenges in opening a bank account for such entity.

VII. Differences between STO, ICO and IPO

The following synopsis sets out the fundamental differences between an STO, ICO and an Initial Public Offering (“**IPO**”). It should be noted that STOs are regulated and therefore generally attract a higher level of investor confidence than unregulated ICOs.

STO	ICO	IPO
<ul style="list-style-type: none"> Specific regulatory framework (securities regulation), with options for light touch regulation or exemptions 	<ul style="list-style-type: none"> Unregulated outside the regulatory framework of securities regulation 	<ul style="list-style-type: none"> Specific and well-defined regulatory framework
<ul style="list-style-type: none"> Company can be early stage company or a mature enterprise 	<ul style="list-style-type: none"> Company can be early stage company or a mature enterprise 	<ul style="list-style-type: none"> Company needs minimum track record
<ul style="list-style-type: none"> Funds can be raised for a specific purpose or long term development 	<ul style="list-style-type: none"> Funds can be raised for a specific purpose or long term development 	<ul style="list-style-type: none"> Funds raised for company's long term development
<ul style="list-style-type: none"> High level of flexibility, limited rights may be given to token holders 	<ul style="list-style-type: none"> High level of flexibility, limited rights may be given to token holders 	<ul style="list-style-type: none"> Shareholders have well-defined rights
<ul style="list-style-type: none"> Target audience of high net worth or institutional investors 	<ul style="list-style-type: none"> Target audience usually retail market 	<ul style="list-style-type: none"> Target audience often institutional investors
<ul style="list-style-type: none"> Direct economic exposure to Issuer is possible 	<ul style="list-style-type: none"> No direct economic exposure to company, financial returns from tokens only through speculation on the secondary market (token exchanges) 	<ul style="list-style-type: none"> Direct economic exposure to company
<ul style="list-style-type: none"> Varied and flexible levels of transparency 	<ul style="list-style-type: none"> Low transparency 	<ul style="list-style-type: none"> Transparency levels and levels of reporting prescribed by listing rules
<ul style="list-style-type: none"> Flexibility with regards to disclosure levels (formal prospectus or private information memorandum) 	<ul style="list-style-type: none"> No prescribed market standard for offering documentation 	<ul style="list-style-type: none"> Complies with a market standard for offering memoranda

depending on regulatory status of the token)		
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B. WHY SINGAPORE?

Singapore is a key player in the global tokenisation industry, as the city-state has positioned itself strategically as the leading global hub for both financial services and blockchain. A well-regulated financial centre with an excellent reputation, a clear regulatory framework for both STOs and ICOs, low taxes and easy access to a large pool of institutional and high net worth investors across South-East Asia, North Asia and India, make Singapore the globally preferred jurisdiction for STOs. According to the World Bank, the city-state is also the easiest place in the world to do business – a good argument for many clients to establish themselves in Singapore.

Singapore is strategically crypto-friendly and offers a clear regulatory framework. If digital tokens are utility tokens, they are unregulated. If they are security tokens, for example a debt instrument or providing returns based on an underlying investment, then they are in principle regulated. In this case, the respective offering of shares, debt instruments (for example bonds, business trusts and collective investment schemes), may be subject to prospectus requirements. Collective investment schemes are broadly defined to include pooled and managed investors’ funds, with investors getting a return based on fund performance. If such rights are conferred by the digital token, it is a security. However, even in cases where an STO is deemed a security and may require a prospectus, there are exemptions for private placement and smaller offerings in Singapore.

Singapore offers a low tax regime favourable to STOs (17% corporate tax, no capital gains tax, access to a large network of double taxation treaties etc.). If properly structured, the funds raised by means of an STO are not taxable. It is straightforward and cost-efficient to incorporate an entity in Singapore – Ressos provides a “one-stop” solution for incorporation and administration, including the provision of professional local director services and bank account opening assistance.

C. THE REGULATORY POSITION IN SINGAPORE IN DETAIL

Initially, in March 2014, Singapore’s financial regulator, the MAS had stated that virtual currencies are not regulated. However, the MAS has also clarified that they view a virtual currency (functioning as a medium of exchange, a unit of account or a store of value) as only one particular class of digital tokens. Where a digital token represents an ownership or security interest over the assets or property of an issuer, such tokens may qualify as an offer of shares or units in a collective investment scheme under the SFA. Where such tokens represent a debt owed by an issuer, they could also be considered a debenture

under the SFA. Additionally, certain requirements under the CORRUPTION, DRUG TRAFFICKING AND OTHER SERIOUS CRIMES (CONFISCATION OF BENEFITS) ACT (CAP. 65A), the TERRORISM (SUPPRESSION OF FINANCING) ACT (CAP. 325) and the various regulations giving effect to United Nations Security Council Resolutions, apply.

In November 2017, the MAS published an additional guide on the application of Singapore securities regulation to offers or issues of digital tokens and cryptocurrency in Singapore. In the opinion of the MAS, the offer/issue of digital tokens in Singapore may be regulated if the digital tokens fall into one of the categories of capital markets products under the SFA. Such categories include securities, futures contracts, and contracts or arrangements for the purposes of foreign exchange trading or leveraged foreign exchange trading.

One consequence of falling into one of the above mentioned categories is that intermediaries who facilitate offers or issues of digital tokens or cryptocurrency, such as operators of platforms on which offerors of digital tokens may make primary offers or issues of digital tokens, the operators of token exchanges and similar platforms used to trade digital tokens, and persons who provide financial advice or fund management services in respect of digital tokens or virtual currency, may be required to hold a regulatory license to be able to carry on such activities.

It should be noted that, when marketing any digital token to investors outside Singapore, apart from being compliant with the laws of Singapore, the token sale also needs to be compliant with the laws of the jurisdiction in which the respective investors are located. Issuers are often dealing with this aspect by excluding investors from certain jurisdictions in their offering documentation, or by including restrictions in respect of investor classes, distribution etc. In addition, proper investor KYC whitelisting procedures should be put into place by the Issuer. Ressos facilitates the provision of Singapore law advice and procures comprehensive advice on cross-border matters.

D. LEGAL DOCUMENTATION FOR A SINGAPORE SECURITY TOKEN OFFERING

The following section provides an overview of the key legal documentation required to conduct an STO in Singapore.

1. Offering Documentation

1.1. Utility Tokens: ICO Terms and Conditions

Digital tokens exist in the virtual realm and are typically nothing more than a set of rights. In the case of a utility token, these rights are defined in the general terms and conditions governing the TGE and the use of the tokens, the so-called ICO Terms and Conditions ("**T&Cs**"). The T&Cs define the token and its features. They provide information about the Issuer, include provisions on pricing and timing of

the token sale, set out any restrictions on the distribution of the tokens (for example exclude U.S. investors), contain disclaimers aimed at making proper disclosure to contributors and protecting the Issuer, set out how to acquire and receive tokens, include representations and warranties to be made by the investor; and contain commercial terms depending on the technological details of the token offering.

The T&Cs constitute the main legal agreement between an investor/contributor and the Issuer and, together with any private sale agreement or pre-sale agreement, are often the only legal recourse available to an investor buying into an unregulated token. From the perspective of the Issuer, it is therefore imperative that the offering documentation is drafted to protect the Issuer and its directors from any legal claims which might later be raised by previous investors or investors in the token offering.

1.2. Security Tokens: Prospectus or Information Memorandum

In the case of a security token, there are no T&Cs. Instead, the law generally requires the Issuer to prepare a formal prospectus, which has to be filed and approved by MAS. Depending on the project in question, this process may be onerous, time consuming and expensive. Most Issuers of security tokens opt to make use of certain safe harbour provisions included in the SFA, which allow them to issue a security token without having to comply with the prospectus requirement of the SFA. This entails publishing an informal Information Memorandum which assumes the function of the T&Cs and sets out the legal terms of the STO.

Depending on the individual project, there are typically three options available to avoid the prospectus requirements under the SFA:

- Firstly, to prohibit any Singaporean residents from participating in the STO, in which case the prospectus requirements enshrined in the SFA are not applicable in their entirety. This means that the security token to be issued is practically unregulated from a Singapore perspective, at least as far as securities regulation is concerned.
- Secondly, the Issuer may opt to have the STO fall within the “private placement exemption” provided by the SFA, in which case the security token must not be marketed to more than 50 persons resident in Singapore.
- Thirdly, the Issuer may opt to make use of the “small offering exemption” under the SFA, in which case the Issuer will be allowed to raise up to SGD 5 million within Singapore.

It should be noted that Singapore law is not concerned with the regulatory status

of the STO outside of Singapore, i.e. it is of no concern to Singapore law if the security token is marketed to a wider audience outside Singapore or more than SGD 5 million are raised outside Singapore.

1.3. Marketing restrictions and cross-border considerations

It should be noted that going down the route of an information memorandum instead of a formal prospectus will create limitations with respect to a possible marketing of the security token. Where residents of Singapore are excluded from being eligible as investors, any marketing aimed at residents of Singapore is prohibited. Where the Issuer intends to make use of the safe harbour provisions under the SFA to avoid having to file a prospectus for approval, marketing restrictions will apply. It should also be noted that securities aimed at accredited or institutional investors are less regulated than securities aimed at an audience of retail investors. It is therefore imperative that an Issuer comply at all times with all legal requirements of the regulatory framework.

TGEs are usually marketed internationally. Where an STO is structured through Singapore, the Issuer will therefore not only have to comply with Singapore law, but should also ensure compliance with foreign laws. In this respect, the offering documentation to be issued during the STO will usually specify eligible investor classes, marketing restrictions and disclaimers specific to each jurisdiction targeted as part of the distribution efforts undertaken by the Issuer.

2. Pitch Decks, White Papers and other Marketing Collateral

Due to the nature of the STO as a specialised means of corporate finance, a STO does not necessarily involve a technical white paper (the "**White Paper**") setting out any technology behind a blockchain project. This is different in ICO projects, where customarily every token sale involves a White Paper. However, in an STO, investors are usually invited to subscribe to security tokens by means of pitch decks, fund summaries or similar marketing collateral setting out an investment opportunity and an underlying business case or investment thesis. All these documents should be reviewed and legal disclaimers inserted where necessary.

3. Token Legal Opinion

In order to hold any TGE, it is necessary to determine the precise legal nature of a token. The issuing of a formal legal opinion (the "**Legal Opinion**") serves to determine to which extent the token must be properly construed as a regulated security. Key factors to be taken into account may include:

- What are the rights attached to the tokens? To which extent exactly must the token

be construed as a security, debenture, financial product, collective investment scheme etc. for the purposes of local regulation in Singapore? The regulatory requirements will differ depending on the type of security created.

- Where will the Issuer operate and where are the likely investors based? In this respect it should also be noted that Singapore law (and with it licensing and other regulatory requirements) can be applicable to an STO offering made by an Issuer based outside of Singapore, if the STO falls within the ambit of the SFA and targets investors based in Singapore.
- What are the mechanisms for transferring or redeeming any tokens, or any means of converting tokens into fiat currency? How (if at all) can tokens be purchased back from investors? Do the tokens provide a stored value facility? Will the tokens be backed by certain assets? Will they be considered a legal or beneficial interest in any assets?
- How will the tokens be marketed? Which representations will be made to potential investors?

4. Token Subscription Agreement

During an STO, the investor will subscribe to security tokens by means of a token subscription agreement. This agreement will govern the terms and conditions pursuant to which the investment is made, and will incorporate by reference the terms of the information memorandum or formal prospectus.

5. Pre-Sale Agreements, Private Sale Agreements and SAFTs (optional)

Pre-Sale Agreements, Private Sale Agreements or Simple Agreements for Future Tokens (SAFTs) are instruments for Issuers to run a limited token sale before the official STO. The fundraising targets for a Pre-Sale are usually lower as compared to that of the main STO. Tokens are usually sold at a discount to certain classes of potential investors (e.g. friends and family, selected investors). In addition to raising a certain amount of funds, a Pre-Sale also allows the Issuer to test for investor interest ahead of the actual main STO. Pre-Sale token sales volumes are usually limited in order not to dilute the potential of the actual STO.

Some Issuers decide to offer its counterparties to enter into an escrow agreement whereby the law firm, acting as escrow agent, will hold fiat money or cryptocurrency on escrow for the benefit of the investor. Subject to the terms of the escrow agreement and certain trigger events occurring, the monies will be released to the Issuer, usually in return for security tokens transferred to the investor by the Issuer. FX brokerage services are available internationally to convert cryptocurrency raised during an STO to fiat money.

6. Anti-Money Laundering Compliance Manual

The Issuer should have a comprehensive compliance manual in place, which will describe its general compliance framework, as well as more specific policies and procedures in respect of regulatory compliance requirements in respect of anti-money laundering, corruption and anti-bribery, record keeping and personal data protection. A robust compliance manual will help to protect the Issuer and its directors against the legal, criminal, financial and reputational risk associated with allegations of money laundering or terrorism financing.

The relevant MAS NOTICES ON PREVENTION OF MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM may apply, in particular with regards to obligations to report suspicious transactions to the Commercial Affairs Department (“**CAD**”) and to prohibit any dealing with or providing financial services to designated individuals and corporates pursuant to the TERRORISM (SUPPRESSION OF FINANCING) ACT (CAP. 325). In case of any potential investigations against investors and/or the Issuer, being able to show that the respective investor has passed a structured due diligence process as part of a robust compliance framework is of paramount importance.

The compliance manual may also be requested by potential investors or token exchanges doing their own due diligence on the Issuer and the token issued by means of the STO as a precondition of investing into the respective token or listing it on a token exchange.

7. Listing of security tokens on crypto exchanges

Whilst tokenisation is generally an emerging trillion-dollar market, there currently still is a limited number of token exchanges which are suitable for trading security tokens. However, major institutional players like Goldman Sachs and NASDAQ are working on the creation of specialised security token exchanges. Singapore, like other global financial centres, is in the process of creating the regulatory framework and technical infrastructure for such security token exchanges. Hand in hand with the emerging of institutional-grade custodians for digital tokens, we expect that a variety of suitable security token exchanges will be in place within the next 24 months, allowing market participants to raise funds and access unprecedented levels of liquidity on a global scale.

E. STO COMPANY INCORPORATION, BANK ACCOUNT AND CORPORATE SERVICES

To structure a STO through Singapore, it is required to set up a Singapore company which will issue the security token. This is usually a Singapore private limited company (Pte. Ltd.). Due to the fundamental difference between an ICO and STO, there is usually no use case for “foundation” entities (which are customarily structured as companies limited by guarantee). The Issuer merely acts as a special purpose vehicle for the TGE, and the funds raised, if properly structured, are usually not taxable.

Every Singapore company require a locally-resident director, must keep proper accounting records and must make annual compliance filings with the Accounting and Corporate Regulatory Authority (“**ACRA**”) and the Inland Revenue Authority of Singapore (“**IRAS**”). On an ongoing basis, the Issuer also has to ensure its compliance with anti-money laundering and data protection regulations.

Ressos provides a "one stop" solution for the legal and tax structuring, incorporation (including the provision of professional director services and bank account opening assistance) and ongoing administration of all entities required for a successful STO structured through Singapore.

F. SERVICES PROVIDED IN RESPECT OF A SINGAPORE STO

Ressos has considerable expertise in the structuring and implementation of STO and ICO projects through Singapore. Where required by local regulation, we work in conjunction with specialist tax consultants, accounting and audit firms. All Singapore law advice procured by the firm is provided by duly licensed advocates and solicitors.

Our services include:

- Legal and tax structuring advice;
- Reviewing of the White Paper (if any) and advising on specific information to be included in "forward-looking statements" and disclaimers;
- Procuring a Singapore law opinion relating to the regulatory token nature (utility token or securities token under the SFA);
- Facilitating communications with MAS where required;
- Drafting or reviewing of Information Memorandum, Token Subscription Agreement and ancillary documents;
- Drafting or reviewing of Pre-Sale Agreements and Private Sale Agreements, SAFT agreements etc.;
- Drafting or reviewing of articles of association and shareholder agreements, advising on seed financing (term sheets, SAFE agreements etc.);
- Drafting or reviewing of an AML Compliance Manual;
- On-going investor KYC whitelisting and regulatory compliance services;
- Advising on social media, marketing language and privacy review;
- Setting up of investment funds and feeder vehicles (if required), in particular in the

Cayman Islands and Channel Islands;

- Tax structuring and advising on all tax aspects of an STO in Singapore;
- Incorporation of corporate entities (private limited company and/or company limited by guarantee), provision of a professional local director, bank account opening assistance; and
- Accounting, tax and corporate secretarial support for all incorporated entities.

G. MARKETING AND FUNDRAISING SUPPORT

Headquartered in Singapore, Ressos is the only international law firm and corporate services provider with an exclusive focus on blockchain, tokenisation and STO/ICO projects structured through Singapore, Hong Kong or offshore jurisdictions. Our firm enjoys a high level of visibility in the market, serves on the legal panels of several token exchanges and has strong connections to other specialised service providers, such as financial advisors, family offices and institutional investors. This makes us well-placed to facilitate fundraising and capital introductions.

H. TIME FRAME AND COST

The time frame for legal services rendered in respect of an STO project largely depends on the complexity of the token and the investment thesis of the STO. Generally, the legal documentation for a multi-jurisdictional private placement type of STO (including U.S. investors where required) can be procured within as little as four to six weeks.

Ressos offers transparent fixed fee STO packages based on stages and milestones, allowing clients to budget for their STO project with confidence and clarity. Please contact us for an initial discussion and a specific proposal with fees and timelines.

I. FURTHER INFORMATION

As an international specialist law firm, Ressos has been involved in hundreds of ICO and STO projects, and is currently working on a large number of confidential STO projects for both Issuers and funds. We have extensive deal experience in the full range of TGE projects, from simple utility tokens to tokenised venture capital funds and collateralised (asset-backed) security tokens.

For further information, please contact:

Dr Alexander Ressos, TEP
Managing Partner, Ressos Legal Pte. Ltd.
10 Anson Road, #23-05A International Plaza,

Singapore 079903

E: contact@ressos.com

www.ressos.com

www.SingaporeSTO.com

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