Blockchain technology has been hailed as the future of transactions because it promises total security and integrity of information in an age of fake news, hacking and fraud. The blockchain originally devised for the digital currency known as Bitcoin provides a transparent ledger that tracks and records transactions on a database that is distributed across a network of computers (nodes) rather than a single location. Since the blockchain cannot be controlled by a single entity and does not have a single point of failure, it ensures that data cannot be tampered with unless each node receives the correct verification of the authenticity of the transaction. Once the transaction and user's status have been verified by using known algorithms to solve a computational puzzle, the transaction creates a new “block” of data in the permanent and unalterable ledger chain. Since its original use for cryptocurrencies, blockchain technology has been used in numerous other ways, including smart contracts, smart bonds, asset management, insurance claims processing, smart property transactions, money lending, smart appliances, supply chain sensors, intellectual property rights for music, voting platforms, and public ledgers recording births, deaths and marriages.

Blockchain's assurance of incorruptibility led technology companies to realise its potential for use in raising startup capital. Thus, the birth of the Initial Coin Offering or "ICO," whereby the investor is issued a crypto coin or token rather than a share of the company in return for investment. The ICO requires a blockchain and set of rules and protocols to issue new cryptographically secure coins or tokens (digital certificates) that are easy to transfer peer-to-peer. The blockchain is also needed to record who owns the tokens and any transactions that are undertaken on exchanges.

Singapore is attractive to potential ICO launchers since the Monetary Authority of Singapore (MAS) has issued guidance on Digital Token Offerings and has a FinTech Regulatory Sandbox aimed at actively encouraging such financial innovations, unlike some countries (China and South Korea) that have banned ICOs outright due to the perceived risk of fraud involved. The MAS Sandbox allows startups to experiment, within a well-defined space and limited duration, with financial products or services that do not clearly fit within existing legal and regulatory requirements. However, such products should include appropriate safeguards to minimize the risk of failure and consequential impact on the existing financial system.

Lawyers in the Duane Morris & Selvam FinTech Practice have increasingly provided regulatory and corporate advice to clients with issues related to blockchain technology, ICOs and also increasingly, Security Token Offerings (STOs). Our attorneys have significant experience with the regulatory concerns surrounding ICOs and STOs in Singapore and the MAS’s current approach to such offerings.

The team offers the following services:
- Advising on potential strategies, structures and implications of conducting a STO in Singapore;
- Advising on structuring of the token issuer vis-à-vis the operating company;
- Reviewing whitepapers and other marketing materials for compliance with Singapore laws, particularly in relation to KYC/AML/CTF requirements;
- Drafting terms and conditions for the public sale of tokens;
- Drafting the privacy policy for the token issuer;
- Drafting pre-ICO token sale agreements;
- Coordinating with foreign counsel to prepare pre-ICO token sale agreements based on foreign laws;
- Providing general corporate law services, including drafting legal memoranda; and
- Offering advice on compliance, crowdfunding, securities law and data privacy law.
EXAMPLES OF OUR WORK

- Advised the parent company of a Swiss issuer of cryptographic tokens on securities laws, regulations on non-cash payment methods, offshore investment and foreign exchange control, as well as related regulatory guidance pertaining to a contemplated international crowd sale.

- Advised a leading blockchain FinTech and RegTech R&D company on regulations in multiple jurisdictions, including Hong Kong, Singapore, Switzerland, Malaysia and Vietnam, covering a number of topics pertaining to blockchain technology, such as cryptocurrency, ICO, exchanges, data protection and regulatory sandboxes. Supported advocacy activities with respect to related issues.

- Advised a European e-commerce company on establishing an entity and legal structure for an e-commerce business and investing in blockchain technology in Vietnam.

- Advised an edTech company on the set up of its S$50 million fund catered towards investing into FinTech-related businesses. The cornerstone investment is Jules Venture's computing and coding business.

- Advised a provider of bitcoin exchange, e-wallet and payment processor services targeting Korea and the Asian market on its proposed ICO including the drafting of all relevant legal documentation including the whitepaper, terms and conditions of the ICO and the simple agreement for future tokens (“SAFT”), as well as any other matters related to the ICO.

- Assisted a fashion technology company that provides a virtual styling solution with its proposed ICO including the drafting of whitepaper, SAFT for pre-ICO purchases and the terms and conditions of the ICO, as well as advising on the establishment and structuring of entities involved in the ICO.

- Assisted a developer of an intelligent AI companion chatbot designed to help students with their exam revisions on its proposed ICO including the drafting of all legal documentation and marketing materials in relation to the ICO as well as liaising with the Singapore Economic Development Board (“EDB”) for the application of non-profit organization status.

- Advised a company operating a cryptocurrency crowdfunding platform who had completed an ICO in preparing a legal memorandum in respect of responses to queries from MAS on whether its ICO and/or its business was regulated in Singapore. Also issued a U.S. legal opinion on the status of the tokens.

- Advised a financial technology company in the structuring of the legal entities carrying out an ICO as well as the drafting of or advising on all relevant legal documentation, including whitepaper, terms and conditions of the ICO, and pre-ICO agreements.

- Advised a FinTech company on Singapore regulatory matters in relation to their planned ICO.

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Duane Morris & Selvam LLP is the joint law venture consisting of international law firm Duane Morris LLP and Selvam LLC, with headquarters in Singapore. Supported by a network of more than 800 attorneys in multiple offices around the world, it offers innovative solutions to the legal and business challenges presented by today’s evolving global markets.