

CRYPTOCURRENCY – DEVELOPMENTS IN MAURITIUS

by Melissa Virahsawmy

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2017 was a very eventful year for the crypto industry. From the price of Bitcoin shooting from a starting price in the region of USD 985 at the beginning of January 2017 to a surprising USD 19,186 around mid-December 2017¹, to the taking off of the ICO (Initial Coin Offering) concept as a novel fundraising method which allowed blockchain startups worldwide to raise in excess of USD 4 billion YTD², one can only conclude that crypto investors have been kept on their toes during the past year trying to hunt for the next bitcoin whilst sifting the legitimate ICO projects from the scams.

Governments worldwide have also been kept busy trying to stay abreast of the developments in this industry with jurisdictions such as Japan and Canada showing favourable tendencies towards the adoption of cryptocurrencies as a method of payment, but other jurisdictions such as China and South Korea cracking down on the use of these currencies. The predictions regarding cryptocurrencies are broad and differ widely with some professionals fearing that bitcoin is a bubble which will soon burst, whilst others are more optimistic and feel that the price of Bitcoin will keep rising over the coming years.

As far as Mauritius is concerned, the Bank of Mauritius has so far been very cautious in its approach to cryptocurrencies, they issued a warning on the 18 December 2013, advising members of the public to exercise utmost care and diligence when dealing with virtual currencies, and further explaining that members of the public need to be aware of the risks associated with unregulated virtual currencies, which do not provide the same protection as 'hard' or 'real' money.

However, as may be the case worldwide, opinions differ regarding cryptocurrencies and blockchain

¹ <https://charts.bitcoin.com/chart/price>

² <https://www.forbes.com/sites/outofasia/2017/12/18/icos-in-2017-from-two-geeks-and-a-whitepaper-to-professional-fundraising-machines/#2aee25b4139e>

technologies. Whilst the Bank of Mauritius has so far maintained its stand regarding cryptocurrencies with the former Governor, Ramesh Basant Roi, reiterating in November 2017³ that one must be prudent when dealing with virtual currencies, the Board of Investment in Mauritius has adopted a more open approach to this sector by launching its new Regulatory Sandbox License in 2017.

The Regulatory Sandbox License⁴, announced in the 2016-2017 National Budget in Mauritius and proclaimed on the 20 October 2016, offers the possibility for an investor to conduct a business activity for which there exists no legal framework, or adequate provisions under existing legislation in Mauritius. The Regulatory Sandbox License will be issued by the Board of Investment (now part of the Economic Development Board) to eligible companies willing to invest in innovative projects according to an agreed set of terms and conditions for a defined period. To date, a number of licenses have already been issued.

Meanwhile, at a press briefing on the 23 October 2017, the Minister of Financial Services and Good Governance announced the establishment of a committee of technicians from the Financial Services Commission and the Bank of Mauritius, in order to take stock of the development of the cryptocurrency sector, evaluate this market and present a roadmap in this area⁵.

The Fintech and Innovation-driven Financial Services Regulatory Committee (the "Committee") held its first meeting on Friday 9th of February 2018, at the seat of the Financial Services Commission, Mauritius. The discussions of the Committee were centred on positioning Mauritius as a regional hub of sound repute in the field of Fintech Regulations by:

- (i) Building an open and transparent regulatory regime for Fintech in Mauritius which encourages innovation;
- (ii) Exchanging information with other recognised regulatory authorities to contain any kind of illegitimate activities;
- (iii) Keeping cognisance of the best technological innovations and ensuring that Mauritius is at pace with the latest technological advancements in the Fintech ecosystem;
- (iv) In regulating blockchain-related activities, it will take into account the use of latest technology that will prevent hacking and other kind of frauds;
- (v) Recognising the potential benefits of blockchain technology on the economy and society, and encouraging its development;
- (vi) Considering incentives to attract Fintech activities to Mauritius; and
- (vii) Reflecting on the possibility of establishing a sovereign fund in Mauritius to provide seed capital for the development of Fintech activities in the region.

Subsequent to this first meeting, the Committee will assess the current regulatory set up with respect to Fintech and Innovation-driven Financial Services Regulations in Mauritius, and make recommendations on the need to introduce new sets of regulations for Fintech and Innovation. It will also identify priority areas within the regulatory space of Fintech activities.

So far we impatiently wait to hear the outcome of the works of the Committee.

But when we look at the existing legislative framework in Mauritius, although it is clear that crypto or virtual or digital currencies are not currently regulated by the Bank of Mauritius, the question that often crops up regarding ICOs or token sales is the following:

³ <https://www.lexpress.mu/node/319227>

⁴ <https://www.lemauricien.com/article/musee-la-bom-inauguration-officielle-gouverneur-appelle-la-prudence-concernant-la-crypto-mon/>

⁵ <http://www.investmauritus.com/schemes/rsl.aspx>

IS THE ISSUE OR SALE OF CRYPTO TOKENS REGULATED UNDER THE SECURITIES ACT OF MAURITIUS?

An ICO sounds very similar to an IPO (Initial Public Offering) in which investors are invited or solicited to invest in securities. IPOs are strictly regulated by the Securities Act and an IPO cannot be made without the approval and licensing of the Financial Services Commission.

So as to assess whether an issue or sale of crypto tokens would be regulated by the Securities Act, we would first need to analyse the definition of securities under the Securities Act:

“securities” means –

- (a) shares or stocks in the share capital of a company, whether incorporated in Mauritius or elsewhere, other than a collective investment scheme;
- (b) debentures⁶, debenture stock, loan stock, bonds, convertible bonds or other similar instruments;
- (c) rights warrants, options or interests in respect of securities as mentioned in points (a) and (b);
- (d) treasury bills, loan stock, bonds and other instruments creating or acknowledging indebtedness and issued by or on behalf of or guaranteed by the Government of the Republic of Mauritius or the government of another country, a local authority or public authority, as may be prescribed;
- (e) shares in, securities of, or rights to participate in, a collective investment scheme;
- (f) depository receipts or similar instruments;
- (g) options⁷, futures⁸, forwards and other derivatives whether on securities or commodities;
- (h) any other transferable securities, interests or assets as may be approved by the Commission; or
- (i) any such other instruments as may be prescribed;

The definition of the term “securities” in the Securities Act therefore indicates that some form of right or interest or promise of return would be attached to each item defined thereunder. The details of each ICO and of the token being sold or issued will depend on that individual ICO but generally, we note that tokens issued during an ICO do not give right to equity in the underlying company, do not give rights to interest on the amount invested, do not give shareholders or equity rights and are generally devoid of any rights other than that of being a functional good which enables the user to have access to the underlying platform linked to the project. The issuer is also often quick to state that the token sale is not an offer of securities and that the holder should not purchase the token as a speculative exercise. The white paper of an ICO often also makes statements such as no promise of future performance is made with respect to tokens, tokens are not participation in the company and hold no rights in the company, and the company may freely spend proceeds received from the ICO without any conditions.

Therefore, we can only conclude that to date, unless the white paper detailing the token sale describes the tokens so that it falls within the above-mentioned definition of securities, ICOs remain unregulated under the Securities Act of Mauritius. This absence of a regulated environment for this new form of fundraising may seem wary to some hardened investors used to functioning in well defined and licensed environments but the skyrocketing price of virtual currencies as well as continued investment in new ICOs make us conclude that

⁶ a form of bond certificate issued by a corporation to show funds invested, repayment of which is guaranteed by the overall capital value of the company under certain specific terms.

⁷ An option gives the buyer a right to buy or sell an assets at a set price on or before a given date.

⁸ Futures are generally financial products bought or sold at a specific price to be delivered in the future.

interest in this sector continues to grow despite the volatility of such assets and the risks associated thereto.

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