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**Asian Fintech Pte. Ltd.**  
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Marina Bay Financial Centre  
Singapore 018983

14 October 2019

Dear Sirs,

**LEGAL OPINION ON THE RIWIGO (RIWI) TOKENS UNDER SINGAPORE LAW.**

1. We refer to the Riwigo White Paper version 1.0.0 2019 ("**White Paper**") pertaining to the Riwigo platform ("**Platform**") and the Riwigo Token ("**Token**").

**A. INSTRUCTIONS**

2. We are instructed that Asian Fintech Pte. Ltd., a company incorporated under the laws of the Republic of Singapore (hereinafter referred to as the "**Issuer**"), intends to list the Token on a cryptocurrency exchange in Singapore ("**Exchange**") for the Tokens to be traded in the secondary market. As requested, we set out herein our legal opinion on whether the Token will be deemed a 'utility' token or a 'security' pursuant to the Securities and Futures Act (Cap. 289) ("**SFA**") and related subsidiary legislation.
3. We are further instructed that the key features of the Platform and Token are as follows:
  - a. The Platform is a dedicated platform for diagnostics, wellness and beauty bookings, consultations and healthcare.
  - b. The Platform will enable customers to select/meet service providers, doctors for either a personal or e-consultation or at venue or on-demand.
  - c. The Platform provides the solution to merchant and customer problems by using smart contracts of a public and open source blockchain ecosystem to enable users to transact freely and openly.
  - d. The Tokens will function as utility tokens and be used only for the following purposes:
    - i. Enable Token holders to use the Tokens as a means of payment in the wellness industry, for example, for spa bookings, salon bookings, other wellness facilities, travel and excursions and hourly hotel bookings pay as you use.
    - ii. To pay for services and products on Riwigo and other platforms; Spas, Salons, Fitness, Clinics and Healthcare
    - iii. access and use the Platform, its functions and its products.

- iv. To be used as payment for any and all transaction fees incurred in the usage of the Platform.
- e. The Tokens may be traded on and purchased through third party cryptocurrency exchanges.
- f. The Tokens do not entitle the Token holders to shares or equity in the Issuer or in any company or property and do not grant or entitle Token holders to any ownership rights, voting rights, participation rights, repayment rights, governance rights or any other rights in or against the Issuer or any of its related companies. The Tokens do not constitute or represent shares in the share capital of the Issuer or any related or unrelated corporation. The Tokens do not constitute units in a trust in respect of any property. The Tokens do not confer or represent a legal or beneficial ownership interest in any business entity or structure. The Tokens do not constitute or represent any debt or debt securities. The Tokens do not represent any obligation, covenant, undertaking or guarantee to pay or any acknowledgement of such obligation, covenant, undertaking or guarantee. The Tokens do not represent a contract or arrangement for the discharge of obligations thereunder at a future time.
- g. The Issuer has not apprised us on whether the Tokens will be utilised for any purpose other than the purposes enumerated under paragraph 3 herein.

## **B. ISSUE**

- 4. The specific issue that we have been instructed to opine upon and to render our legal advice on is:
  - a. Whether or not the Tokens constitute securities, derivatives contracts or units in collective investment schemes, so as to potentially result in the Exchange's listing of the Token for trading being regulated as the establishing or operating of an organized market under Section 7(1) of the SFA by the Monetary Authority of Singapore ("**MAS**").
- 5. We have not been instructed to opine on, or provide any advice, on any query or matter other than that set out in the preceding paragraph. For the avoidance of doubt, we do not undertake any responsibility whatsoever for the contents of the White Paper and do not express any opinion on the activities on the Platform and the activities of the Issuer other than those directly related to the issues set out in the preceding paragraph.

## **C. EXECUTIVE SUMMARY**

- 6. Based on the instructions you have provided to us and as set out above, we are of the opinion that:
  - a. The Tokens are unlikely to be deemed as "securities", "derivative contracts" or "units in a collective investment scheme" for the purposes of the SFA. Hence, the Exchange's listing of the Token for trading would be unlikely to be regulated as the establishing or operating of an organized market under Section 7(1) of the SFA by the MAS.
  - b. The MAS issued a Guide to Digital Token Offerings on 14 November 2017, which was last updated on 5 April 2019 (the "**DTO Guide**"). Based on our review of the (non-exhaustive) DTO Guide (including the case studies in the DTO Guide) and

assessment based on the Issuer's specific fact pattern, the SFA and related subsidiary legislation are not likely to apply to the Tokens.

#### D. ANALYSIS

7. Our analysis is structured in the following manner:

- a. MAS Guidance on Digital Token Offerings;
- b. Whether the Tokens constitute Securities;
- c. Whether the Tokens constitute Derivatives Contracts; and
- d. Whether the Tokens constitute Units in a Collective Investment Scheme.

i. MAS Guidance on Digital Token Offerings

8. On 1 August 2017, MAS issued a press release "MAS clarifies regulatory position on the offer of digital tokens in Singapore" (the "**MAS Clarification**") stating:

*"[MAS] clarified today that the offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under the Securities and Futures Act (Cap. 289) (SFA).*

*... MAS has observed that the function of digital tokens has evolved beyond just being a virtual currency. For example, digital tokens may represent ownership or a security interest over an issuer's assets or property. Such tokens may therefore be considered an offer of shares or units in a collective investment scheme under the SFA. Digital tokens may also represent a debt owed by an issuer and be considered a debenture under the SFA.*

*Where digital tokens fall within the definition of securities in the SFA, 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 under the SFA and Financial Advisers Act (Cap. 110), unless exempted, and the applicable requirements on anti-money laundering and countering the financing of terrorism. In addition, platforms facilitating secondary trading of such tokens would also have to be approved or recognised by MAS as an approved exchange or recognised market operator respectively under the SFA.*

*Examples of schemes falling under the revised definition of a collective investment scheme are found in Section 3 of the Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets, July 2014. [Emphasis added.]"*

9. It is clear from the MAS Clarification that MAS will look into the substance of the arrangement to consider whether it would amount to products presently regulated by MAS, and not merely the labels or mode of arrangements.

10. The approach undertaken by MAS is to assess the nature and characteristics of the Tokens to ascertain if there is any underlying security or ownership interest or right that would cause the Tokens to be considered as a product that is regulated under the SFA.
11. On 5 April 2019, MAS issued the updated DTO Guide, stating that it would examine the structure and characteristics of, including the rights attached to, a digital token in determining whether the digital token is a type of capital markets products regulated under the SFA. Capital markets products include "any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for purposes of leveraged foreign exchange trading, and such other products as MAS may prescribe as capital markets products."
12. In particular, MAS highlighted that a digital token may constitute a share, a debenture, a unit in a business trust, a securities-based derivatives contract or a unit in a collective investment scheme ("**CIS**").
13. The Tokens have some similarities to that in case study 1 set out on page 10 of the DTO Guide. The case study hypothetical states:

*"Company A plans to set up a platform to enable sharing and rental of computing power amongst the users of the platform. Company A intends to offer digital tokens ("Token A") in Singapore to raise funds to develop the platform. Token A will give token holders access rights to use Company A's platform. The token can only be used to pay for renting computing power provided by other platform users. Token A will not have any other rights or functions attached to it and is not or is not intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt. Company A intends to offer Token A to any person globally, including in Singapore.*

*Application of relevant laws administered by MAS in relation to an offer of Token A*

- *A holder of Token A will only have rights to access and use Company A's platform, and the right to use Token A to pay for rental of computing power provided by other users. Token A will not provide its holder any other rights or functions attached to it. Hence, Token A will not constitute capital markets products under the SFA.*
- *Company A's offer of Token A will not be subject to any requirement under the SFA or the Financial Advisers Act. However, Company A must abide by all Singapore laws, including the CDSA, the TSOFA and the UN Regulations, in the conduct of its business."*

14. Much like Token A in the Case Study 1, the Token grants rights to access the Platform and pay transaction fees for the products and services offered on the Platform and its ecosystem. The Token does not provide any other function and no further rights are attached to the Token. The Token is not or is not intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or

for the discharge of a debt. Hence, like Token A, the Token is unlikely to constitute a capital markets product under the SFA.

15. It will be further analysed below whether the Tokens will likewise be unregulated under the SFA.

ii. Whether the Tokens constitute Securities

16. Cryptocurrency exchanges may be regulated under the SFA. Section 7(1) SFA states:

*“A person must not establish or operate an organised market, or hold itself out as operating an organised market, unless the person is —*

- (a) an approved exchange; or*
- (b) a recognised market operator.”*

17. Paragraph 1 of Part I of the First Schedule of the SFA defines “organized market” as follows:

*“(a) a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes (whether through that place or facility or otherwise); or*

*(b) such other facility or class of facilities as the Authority may, by order, prescribe.”*

18. Hence, in order to ascertain whether the Exchange would be regulated for its listing of the Tokens for trading, it has to be determined whether the Tokens are securities, derivatives contracts or units in collective investment schemes.

19. “Securities” is defined in section 2(1) SFA as follows:

*“(a) shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership;*

*(b) debentures; or*

*(c) any other product or class of products as may be prescribed,*

*But does not include -*

- (i) any unit of a collective investment scheme;*
- (ii) any bill of exchange;*
- (iii) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or*
- (iv) such other product or class of products as may be prescribed;”*

20. Based on our assessment of the White Paper, it is unlikely that the Tokens would be deemed to be shares, debentures, business trust units or securities-based derivatives contracts under the SFA and related subsidiary legislation because the Tokens are strictly for consumptive use as utility tokens only, mainly to provide users with access to the products and services on the Platform as described in paragraph 3 above, and do not entitle holders to any right against the Issuer.
21. According to the Token features set out in the White Paper, the Tokens will not offer any rights to profits, dividends or other right to revenue of the Issuer or the Platform. Instead, the Token is intended to provide a practical solution to the Issuer's business model by enabling access to the Platform and usage of the features, services and products on the Platform. The Token is therefore not likely to be construed as a security, but a Token with utilitarian value only, i.e. a 'utility token' serving the utilitarian functions described above.
22. The DTO Guide suggests that a share "confers or represents ownership interest in a corporation, represents liability of the token holder in the corporation, and represents mutual covenants with other token holders in the corporation *inter se*" (DTO Guide at 2.3.1).
23. The leading Singapore law treatise on company law (Walter Woon on Company Law (3rd Edition, 2009) at 424) states:

*"A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders *inter se* in accordance with [s 39(1) of the CA]: per Farwell J in *Borland's Trustee v Steel Brothers & Co Ltd*. Shares are 'a right of participation in the company on the terms of the articles of association': per curiam, *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)*. 'Primarily a share in a company is a piece of property conferring rights in relation to distributions of income and of capital': per Dixon J in *Peters' American Delicacy Co Ltd v Heath*".*

24. According to section 2(1) SFA and section 4(1) of the Companies Act, a "share" is defined as "*share in the share capital of a corporation and includes stock except where a distinction between stocks and shares is expressed or implied*". Token holders do not acquire any right in the Issuer by virtue of being a Token holder other than a right to utilise the Platform's products and services. It does not purport to represent or confer on the holders ownership interest in a corporation, liability in the corporation, or mutual covenants with other Token holders in the corporation *inter se* or any right in relation to distributions of income out of the profits of the Issuer. The Token does not confer any equity ownership or any governance, voting rights or control over the management of the Issuer or any other corporation. Accordingly, the Tokens are unlikely to constitute shares in the share capital of the Issuer.

25. It is therefore unlikely that the Token would be deemed a security in the form of a share, under the SFA.
26. According to section 2(1) SFA and section 2 of the Business Trusts Act (Cap. 31A) (“BTA”), business trust means a trust that is established in respect of any property and that has a number of specified characteristics, or a class or description of trust that is declared by the MAS, by notice published in the Gazette, to be a business trust for the purpose of the BTA. The Tokens are unlikely to be units in a trust that is established in respect of any property and are not units in what is declared by the MAS to be a business trust. Hence, Tokens are unlikely to constitute business trust units.
27. The Tokens are also unlikely to be instruments conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership.
28. Section 2(1) SFA defines “debenture” as follows:
- “(a) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer;*
  - (b) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a trustee-manager of a business trust in its capacity as trustee-manager of the business trust, or a trustee of a real estate investment trust in its capacity as trustee of the real estate investment trust, whether constituting a charge or not, on the assets of the business trust or real estate investment trust; or*
  - (c) such other product or class of products as the Authority may prescribe, but does not include -*
    - (i) a cheque, letter of credit, order for the payment of money or bill of exchange; or*
    - (ii) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made under that provision provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;”*
29. Section 239(3) of the SFA further provides:
- “(3) For the purposes of this Division —*
    - (a) any invitation to a person to deposit money with or to lend money to an entity shall be deemed to be an offer of debentures of the entity; and*
    - (b) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation shall be deemed to be a debenture.”*

30. A useful guide to the definition of debenture may be found in the case of *Bensa Sdn Bhd v Malayan Banking Bhd* [1993] 1 MLJ 119, wherein the High Court of Malaysia held that:

*“In the present day, a wide range of forms and instruments are introduced to meet the ever changing needs of modern day commerce and for this, the term ‘debenture’ should also include besides ‘debt’, any obligation, covenant, undertaking or guarantee to pay or any acknowledgment thereof.”*

31. It is also unlikely that the Tokens would be deemed by MAS to constitute a "debenture" under section 2(1) SFA because the characteristics and features of the Tokens do not constitute that of a debenture. For the avoidance of doubt, the definition of "debentures" includes "any other debt securities".
- a. Essential to debentures is the concept of indebtedness or a debt instrument or a bond. The White Paper do not suggest in any way that the Tokens would constitute a debt instrument in anyway or acknowledge a loan or debt.
  - b. The main function of the Token is to access and use the Platform as well as the products and services supplied thereon, and not to represent a right to repayment or a right to return on an investment.
  - c. Furthermore, there is no promise or guarantee by the Issuer to buy-back Tokens or to exchange Tokens for money or money's equivalent from Token holders.
  - d. The fact that Tokens may be traded on cryptocurrency exchanges does not make the Tokens a form of debenture.
32. Further, the MAS has not prescribed cryptocurrency or similar things as "such other product or class of products" as "securities" within the meaning of section 2(1) of the SFA. It is therefore unlikely that the Tokens constitute securities under the SFA.

iii. *Whether the Tokens constitute Derivatives Contracts*

33. Section 2(1) SFA defines "derivatives contract" as follows:

*“(a) any contract or arrangement under which —*

- (i) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and*
- (ii) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:*
  - (A) the value or amount of one or more underlying things;*
  - (B) fluctuations in the values or amounts of one or more underlying things; or*

*(b) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed to be a derivatives contract,*

*but does not include –*

- (i) securities;*
- (ii) any unit in a collective investment scheme;*



- (iii) a spot contract;
- (iv) a deposit as defined in section 4B of the Banking Act (Cap. 19), where the deposit is accepted by a bank licensed under that Act or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (v) a deposit as defined in section 2 of the Finance Companies Act (Cap. 108), where the deposit is accepted by a finance company as defined in that section of that Act;
- (vi) any contract of insurance in relation to any class of insurance business specified in section 2(1) of the Insurance Act (Cap. 142); or
- (vii) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract;”

34. The Tokens do not represent a contract or arrangement for the discharge of obligations thereunder at a future time or belong to a class of contracts or arrangements that is, prescribed to be a derivatives contract. Hence, the Tokens are unlikely to constitute “derivative contracts” under the SFA.

iv. Whether the Tokens constitute Units in a Collective Investment Scheme

35. Section 2(1) of the SFA defines a collective investment scheme as follows:

““collective investment scheme” means —

- (a) an arrangement in respect of any property —
  - (i) under which the participants do not have day-to-day control over the management of the property, whether or not the participants have the right to be consulted or to give directions in respect of such management;
  - (ii) under which either or both of the following characteristics are present:
    - (A) the property is managed as a whole by or on behalf of a manager;
    - (B) the contributions of the participants, and the profits or income out of which payments are to be made to the participants, are pooled; and
  - (iii) under which either or both of the following characteristics are present:
    - (A) the effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —
      - (AA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right,

*interest, title or benefit in the property or any part of the property; or*

*(AB) to receive sums paid out of such profits, income, or other payments or returns;*

*(B) the purpose, purported purpose or purported effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —*

*(BA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or*

*(BB) to receive sums paid out of such profits, income, or other payments or returns,*

*whether or not —*

*(I) the arrangement provides for the participants to receive any benefit other than those set out in sub-paragraph (BA) or (BB) in the event that the purpose, purported purpose or purported effect is not realised; or*

*(II) the purpose, purported purpose or purported effect is realised; or*

*(b) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the Gazette,"*

36. The Tokens are not likely to constitute units in a CIS. The White Paper does not suggest that the Token purchasers or holders will be able to "participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property" or "to receive sums paid out of such profits, income, or other payments or returns".

37. As mentioned above, the MAS will look into the substance of any arrangement to consider whether it would constitute a CIS. Based on the White Paper, the Token is not directly linked to any profits from any arrangement in respect of any property, but derives its value from its consumptive purpose unique to the Platform. This arrangement therefore is not likely to be deemed a CIS as it will not provide the buyer of the Token with a right or interest in the property of the Issuer or an option to acquire a right or interest in the property of the Issuer.

38. Hence, the Tokens are unlikely to constitute units in a collective investment scheme.

## **E. DISCLAIMERS**

39. This legal opinion is based on Singapore law as it stands on the date of this opinion, and is based solely on the instructions, information and document (White Paper) which have been provided by you to us and set out above, the veracity of which we shall not be held responsible for. For the purpose of this opinion, we have assumed that the information you have provided to us are complete, up to date and accurate.
40. This legal opinion is strictly based on the fact pattern enumerated in the White Paper provided to us. We have not been apprised of any other information, facts nor have we sighted any legal documentation or financial data or any other information memorandum or details that would affect our legal assessment. This legal opinion is limited to an analysis of whether the Token constitutes a security under the SFA or a utility token only and does not express any opinion on the legality of the various activities that may be undertaken by the Issuer. We do not advise on any commercial, tax, accounting or financial issues that may be related to the Tokens and/or ICO.
41. We express no opinion on any other law as it affects or would be applied in any jurisdiction other than Singapore. We have not made any investigation of, and do not express any opinion on, any other law including (but not limited to) the upcoming Payment Services Act (No. 2 of 2019) that may apply to the issuance of tokens in Singapore in the year 2020. You are advised to obtain legal advice from other jurisdictions as applicable.
42. This legal opinion is intended solely for you only and shall not be relied on by any other party for any purpose. The provision of this Legal Opinion shall not imply that we owe any duty of care to anyone other than you in relation to the subject matter of this Legal Opinion and shall not create or give rise to any solicitor-client relationship between us and any third party.
43. This Legal Opinion is to be governed by and construed in accordance with the laws of the Republic of Singapore.

Yours faithfully,

  
KGP Legal LLC



