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Author**Felix Sy**

Managing Partner
Insights Philippines
Legal Advisors (IPLA)
felix.sy@insights-law.com

Lorybeth Baldrias-Serrano

Partner
Insights Philippines
Legal Advisors (IPLA)
lorybeth.serrano
@insights-law.com



Philippine SEC Invites Comments from Public on Rules for Initial Coin Offerings

The Philippine Securities and Exchange Commission (“SEC”) intends to issue rules on Initial Coin Offerings (“ICO”) and invites banks, investment houses and the investing public to submit their inputs and comments to the proposed rules contained in a draft SEC Memorandum Circular (“the draft rules”), which may be accessed [here](#). With this move, the SEC is of the view that virtual currency is a security under its regulatory authority and supervision, in light of the Securities Regulation Code (“SRC”), for the protection of the investing public.

For the key highlights of the draft rules, please see below:

Registration requirements

Under the draft rules, all companies duly registered with the SEC who propose to conduct an ICO, and companies who propose to conduct ICO targeting Filipinos, must submit to the SEC an initial assessment request and description of the ICO project in compliance with the draft rules. The specific, relevant and timely ICO project details will be contained in a Whitepaper, which must be consistent with the initial assessment request and corporate documents of the issuer-applicant. The SEC reviews the initial assessment request to determine whether the token offered is a security; and if so, the issuer must register the ICO project under the draft rules.

Qualifications and disqualifications of issuers

The draft rules also provide the qualifications and disqualifications of issuers, specifically whether they are allowed to file an application for registration of tokens with the SEC. If the issuer has all the qualifications and none of the disqualifications, and upon the ruling of the SEC that the tokens offered in the ICO are non-exempt securities, the issuer must register the ICO in accordance with the draft rules not later than 45 days before the start of the pre-sale period. Details on the format, contents and supporting documents for the registration statement are provided in the draft rules. The SEC either grants, rejects or orders an amendment of the application for registration. Upon a grant of the application, the SEC shall issue an Order of Registration and Permit to Sell.

Nonetheless, despite the requirement for registration of security tokens, the draft rules provide for exemption from registration for certain tokens. This means that an issuer may offer or sell such security tokens even without registering the same with the SEC. Such list of exempt tokens is similar to the list of exempt securities contained in the SRC.

Permitted and prohibited advertising

Furthermore, the draft rules contain provisions on advertising of the registered security tokens, wherein the issuer is allowed to use only certain types of media for advertisements of its tokens, as enumerated therein; and the issuer may not engage in prohibited advertising as described in the draft rules, including but not limited to deceptive, false or misleading advertising.



Refunds

Lastly, the draft rules provide for 2 events that will trigger the return of funds to the investors. First is if an ICO does not reach the soft cap as set in the issuer's registration statement. A soft cap refers to the minimal amount of funds needed and aimed by the ICO project to proceed as planned. The other event is if the ICO project is abandoned before completion, wherein only the remaining proceeds are refunded to the investors on a pro rata basis based on the amount of their investments.

The SEC imposed 31 August 2018 as the deadline for any comments and inputs.

If you have any questions or require any additional information, please contact [Felix Sy](#) or [Lorybeth Baldrias Serrano](#) or the ZICO Law partner you usually deal with.

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