

## LEGAL ALERT

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## Philippine SEC Revises Rules for Initial Coin Offerings

The Philippine Securities and Exchange Commission ("SEC") revised its draft rules on Initial Coin Offerings ("ICO") and, for a second round of public consultation, invites banks, investment houses and investing public to submit their inputs and comments to the revised proposed rules contained in an SEC Memorandum Circular ("Draft Rules"), which may be accessed [here](#).

### Implications for business in the Philippines

The SEC recognises recent financial innovation through internet platforms for raising funds for the benefit of various businesses, in line with its mandate to encourage investments and active public participation in the capital markets. It intends to open up a different avenue for businesses to raise capital and resources, especially for start-ups or small ventures.

### Significant provisions of the Draft Rules

#### Registration requirements

Under the Draft Rules, all companies duly registered with the SEC who propose to conduct, conducting or conducted ICOs, and companies who propose to conduct, conducting or conducted ICOs 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 said tokens under the Draft Rules.

The Draft Rules allow amendments to the Whitepaper and other documents submitted during the initial assessment and registration proper phase at any time before the SEC determines whether the tokens are security or approved the tokens for registration, respectively. When amendments are submitted, the review period of the SEC will be renewed as well. Nevertheless, the issuer must always ensure the consistency of the Whitepaper and other documents.

#### Qualifications and disqualifications of issuers

The Draft Rules provide qualifications and disqualifications of issuers, specifically whether they are allowed to file an application for registration of tokens with the SEC. Any existing corporation duly registered with the SEC who has an innovative project for a security token ICO, for which there is no hindering law, may file an application for registration with the SEC. Furthermore, the Draft Rules allow registration of security tokens by non-resident foreign companies if the security tokens have been registered in another jurisdiction, subject to an information sharing arrangement in place between the SEC and the competent regulator in the jurisdiction in which the issuer is organised. Also, the security tokens are registered in another jurisdiction and the issuer provides sufficient proof of such registration and regulatory framework of the jurisdiction. In absence of any of these conditions, the foreign issuer must establish a branch office in the Philippines.

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 grant of the application, the SEC issues 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 in the Draft Rules contains similar items as the list of exempt transactions 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.

#### Escrow Arrangement

The issuer of the security tokens is required to contract an independent and reputable escrow agent for purposes of keeping the proceeds of the token sale and the private key of the issuer wallet. The proceeds will be released to the issuer in accordance with the escrow agreement entered into by the issuer and the escrow agent. Such agreement will be dissolved upon full usage of the proceeds. Nonetheless, such escrow arrangement may be dispensed with if the issuer can prove to the SEC that other mechanisms are employed to satisfy the purpose of an escrow agent.

#### Refunds

Lastly, the Draft Rules provide for two 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.

#### **Conclusion**

ICOs are aimed to provide an alternative investment opportunity. Nevertheless, through the Draft Rules, the SEC concurrently ensures protection of the investing public, fosters good governance and promotes market integrity and transparency.

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

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