



ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

SEC ADVISORY

The Commission has detected that certain companies, individuals or groups of persons are enticing the public, either through popular social media platforms or through their own independent website, to participate in so-called “**initial coin offerings**” and to purchase the corresponding “**virtual currency**”.

Virtual currency refers to a digital representation of value issued and controlled by its developers and used and accepted among the members of a specific community or users. An **Initial Coin Offering (ICO)** is the first sale and issuance of a new virtual currency to the public usually for the purpose of raising capital for start-up companies or funding independent projects. In an ICO campaign, a percentage of the total available virtual currency is sold to interested buyers in exchange for (1) fiat currency; (2) another virtual currency; or (3) another asset or security.

Based on the information gathered by the Commission, **some of these new virtual currencies, based on the facts and circumstances surrounding their issuance, follow the nature of a security as defined by Section 3.1 of the Securities Regulation Code (SRC)**. However, unlike ordinary securities, these virtual currencies are **neither guaranteed by any Central Bank nor backed by any commodity**. (Section 1 par. 2 of BSP Circular No. 944, Series of 2017)

Under Section 3.1(b) of the SRC, a security includes an “**investment contract**”. An investment contract, as defined in Section 26.3.5(d) of the 2015 IRR of the SRC, means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.

When a virtual currency is likewise analogous to any of the types of securities under Section 3.1 of the SRC, there is a strong possibility that the said virtual currency is a security under the jurisdiction of the SEC and has to be registered and necessary disclosures have to be made for the protection of the investing public.

Where the scheme involves the sale of securities to the public, the SRC requires that the said securities offered are duly registered and that the appropriate license and/or permit to sell securities to the public are issued to the corporation and/or its agents, pursuant to the provisions of Section 8 and 28 of the SRC.

Likewise, those who act as salesmen, brokers, dealers or agents of ICO entities in selling or convincing people to invest in the investment scheme being offered by ICO companies including solicitations and recruitment through the internet must be registered with the SEC pursuant to Sec. 28 of the SRC.

Accordingly, those who invite or recruit other people to join or invest in this venture or offer investment contracts or securities to the public may be held criminally liable or accordingly sanctioned or penalized in accordance with the Supreme Court decision in the case of SEC vs. Oudine Santos (G.R. No. 195542, March 19, 2014).

If a promoter, issuer, broker or salesman guarantees returns, if a potential investment sounds too good to be true, or if you are pressured to act hastily, please exercise utmost caution and diligence and be wary of the risk that your investment might be lost.

In view thereof, the public is hereby advised to be vigilant when investing in this kind of investing activity and to take the necessary precautions in dealing with ICO entities.

For the guidance of the public.