



FinTech Developments & Resources

Chinese Regulators Halt Token Launches (“ICOs”)

Many of you may have heard news reports of Chinese regulators cracking down on token launches (popularly known as “initial coin offerings” or “ICOs”). We received the information below from our China law firm partner. Please feel free to reach out to your Debevoise contact with any questions.

Here are the main points of the joint notice issued by seven Chinese government agencies in the afternoon of September 4, 2017:

1. ICOs are public fund-raising activities without any PRC government approvals and it is suspected that ICOs may constitute illegally issued financial instruments, securities, illegal fundraising, financial fraud and Ponzi schemes. If ICOs are found to have violated these laws and constitute a crime, public prosecutors shall prosecute these cases.
2. Starting from the issuance date of this notice (September 4, 2017), all ICOs shall be stopped immediately; and for completed ICOs, the issuer shall make refunds to investors.
3. All platform operators that facilitate ICOs shall immediately cease to provide exchange services between cryptocurrency and fiat currency, or between different kinds of cryptocurrencies; all trading or marketing making activities and provision of pricing or information services relating to cryptocurrencies shall be stopped.
4. All financial institutions and nonbank payment service providers shall cease to provide any account opening, payment, trading, settlement and other services for any illegal ICOs and relevant parties involved.

Here are our observations/comments on this notice

1. This notice mainly targets the booming ICOs that are taking place on the ground in China and most of these projects are scams, according to the authorities.
2. It does not change the four-prong test for the crime of illegal fund-raising; so the authorities may order you to cease ICO activities on the ground in China, but they cannot hold you criminally liable if your token offering does not meet the four-prong test.
3. If your token offerings take place outside China and you do not have any presence on the ground in China, the Chinese authorities will not have effective means to enforce the notice against you. In fact, they are very reluctant to go after you unless a large amount of Chinese investors lost money, the project itself is a fraud and the victims took measures to exert pressure on the government to take enforcement actions outside the border of China. That is the reason why we always cautioned about marketing activities on the ground in China, in particular, targeting unspecific investors or specific investors of more than 200 people (the 200 number is a rule of thumb).