



The Securities and Futures Commission of Hong Kong comments on ICOs

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The Securities and Futures Commission of Hong Kong (the SFC) has debunked the myths that no securities laws apply to ICOs. In its first direct statement on the subject, the SFC fired a warning shot at issuers and intermediaries of ICOs and token offerings, reminding them that they may be conducting regulated activities and therefore, may be required to be licensed by or registered with the SFC, irrespective of where they are located.

This statement was released one day after the crackdown on ICOs in the People's Republic of China, which has become one of the biggest cryptocurrency and ICO markets in the world.

The SFC statement warned that certain digital tokens offered in an ICO may be "securities", and related activities (eg dealing in, advising on, or managing) may constitute "regulated activities" under the Securities and Futures Ordinance, such as where such tokens resemble:

- "Shares" in a corporation representing equity or ownership interests - eg right to receive dividends and entitlement to the corporation's surplus assets upon winding up
- "Debentures" in creating or acknowledging a debt liability - eg repayment to token holders the principal of their investment on a fixed date or upon redemption, with interest paid to token holders
- An interest in a "collective investment scheme" - eg if token proceeds are managed collectively by an ICO scheme operator to invest in projects with an aim to enable token holders to participate in a share of the returns

Issuers, sponsors and advisors to digital tokens and ICOs captured by the definition of "securities" should be cognizant of the licensing, prospectus or authorisation requirements under the law, and the potential exemptions that may be available to them. Operators of cryptocurrency exchanges should also beware that they may be engaging in the secondary trading of such tokens, and may also be subject to the SFC's licensing and conduct requirements.

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