



Sep 05, 2017

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Asian Regulatory Actions on ICOs: Optimism Remains Despite New Regulations

While recent announcements by Chinese and South Korean regulators may spark companies planning an initial token launch to reevaluate their strategy, these new regulatory actions likely are not the “beginning of the end” of quality projects in the digital token space.

Led by the People’s Bank of China, Beijing officials on September 4 declared initial coin offerings (ICOs) “illegal”. Similarly, South Korea’s Financial Services Commission announced on September 3 plans to “punish” some forms of ICOs.

Even if the ultimate effect of such actions is to dry up large amounts of Asian capital flowing into these new vehicles, issuers with sound business plans rather than get-rich schemes still have real and time-tested avenues available to them.

For example, many companies have been pre-selling tokens in the U.S. through traditional Rule 506(b) offerings to accredited investors. [As previously noted](#), well-crafted whitepapers have already started to morph into private placement memoranda.

Rather than propose blanket bans, regulators in Canada and Singapore have offered a more nuanced approach in recent weeks, with the [Canadian Securities Administrators](#) essentially adopting the [Howey](#) test, taking a stance similar to the SEC’s recent guidance.

Only a day after Beijing’s pronouncement, Hong Kong’s Securities and Futures Commission [issued a milder statement](#). Perhaps Chinese officials will allow Hong Kong to serve as a laboratory. Regardless, given China’s inability to stop general capital outflows in the face of strong regulations to the contrary, interested Chinese investors should have little difficulty navigating China’s “Great Firewall” to invest in new digital token offerings.

Regulators have ample justification to fear fraud in the ICO space but regulatory overreach runs the risk of stifling the blockchain sector in a jurisdiction adopting too aggressive an approach.

The SEC's slow but steady regulatory approach provides opportunity allows both company and their counsel room to innovate.

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