

**CRYPTOCURRENCIES:**  
**DRACONIAN LAWS ARE ON THE WAY**

Whether or not cryptocurrencies will survive, **TARGET** () is not willing to wager, but one thing seems definite: Transactions in cryptocurrencies will not survive in their present modus agendi.

Recently, The Securities and Futures Commission (**SFC**) of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) issued a warning with regard to cryptocurrency exchanges and investing in ICOs (**I**nitial **C**oin **O**fferings).

The warning was definitive and stated:

*'The Securities and Futures Commission (SFC) once again alerts investors to the potential risks of dealing with cryptocurrency exchanges and investing in initial coin offerings (ICOs). Following a statement on ICOs released on 5 September 2017 (Note 1), the SFC has taken regulatory action against a number of cryptocurrency exchanges and issuers of ICOs.*

*'The SFC has sent letters to seven cryptocurrency exchanges in Hong Kong or with connections to Hong Kong (Note 2) warning them that they should not trade cryptocurrencies which are "securities" as defined in the Securities and Futures Ordinance (SFO) without a licence.*

*'Most of these cryptocurrency exchanges either confirmed that they did not provide trading services for such cryptocurrencies or took immediate rectification measures, including removing relevant cryptocurrencies from their platforms. The SFC may take further action where appropriate, in particular against cryptocurrency exchanges which disregard the provisions of the SFO and those which are repeat offenders.*

*'The SFC has also written to seven ICO issuers. Most of them confirmed compliance with the SFC's regulatory regime or immediately ceased to offer tokens to Hong Kong investors. The SFC will continue to closely monitor ICOs, and will not tolerate any violations of the securities laws of Hong Kong.*

*'ICOs are essentially crowdfunding by blockchain start-ups. ICO issuers are typically assisted by market professionals such as lawyers, accountants and consultants for advice to structure the offering as utility tokens to fall outside the purview of the SFO and to circumvent the scrutiny of the SFC.'*

*"We will continue to police the market and enforce when necessary," said Mr Ashley Alder, the SFC's Chief Executive Officer. "But we are also urging market professionals to do proper gatekeeping to prevent frauds or dubious fundraising and to assist us in ensuring compliance with the law."*

*'Investors have complained to the SFC that they were unable to withdraw fiat currencies or cryptocurrencies from their accounts opened with cryptocurrency exchanges. Some complainants claimed that cryptocurrency exchanges had misappropriated their assets or manipulated the market, or that technical breakdowns of the exchanges' platforms caused them significant losses. Several complaints against ICO issuers alleged unlicensed or fraudulent activities.'*

*"If investors cannot fully understand the risks of cryptocurrencies and ICOs or they are not prepared for a significant loss, they should not invest," said Ms Julia Leung, the SFC's Executive Director of Intermediaries. "Investors who store their fiat currencies and cryptocurrencies with unregulated cryptocurrency exchanges should be aware of the risks of hacking and misappropriation of assets."*

*'Investors are also urged to be wary of the increased risk of extreme price volatility, hacking and fraud when investing in cryptocurrencies and ICOs, and using services of cryptocurrency exchanges. Where these occur in an online environment, victims may have difficulty pursuing action against cryptocurrency exchanges or fraudsters to recover losses.'*

*'The SFC may not have jurisdiction over cryptocurrency exchanges and ICO issuers if they have no nexus with Hong Kong or do not provide trading services for cryptocurrencies which are "securities" or "futures contracts". If, however, there is suspicion of fraud, the SFC is open to refer cases to the Police for investigation.'*

**Notes:**

- '1. The SFC' September statement explained the licensing and authorisation requirements when the arrangement of an ICO or the underlying cryptocurrency amounts to "securities" as defined under Part 1 of Schedule 1 to the SFO. The SFC also warned investors about the potential risks involved in ICOs and cryptocurrencies, such as fraud, insufficient liquidity and opaque pricing. In addition, a circular issued by the SFC on 11 December 2017 explained that an entity is required to have an appropriate licence or authorisation from the SFC if it provides any business services which relate to Bitcoin futures contracts or cryptocurrency-related investment products and constitute a "regulated activity" as defined in the SFO.'*
- '2. The SFC has noticed that, in terms of daily trading volume, a number of cryptocurrency exchanges in Hong Kong or which have connections with Hong Kong rank in the top 20 globally.'*

In days gone by, the British pound note used to have the words:

*'I promise to pay the bearer on demand the sum of' ... etc, etc.*

Those were in the days when British bank notes were redeemable in gold.

Today, The Bank of England will only redeem sterling banknotes in exchange for either more sterling banknotes or, alternatively, in coins.

The contemporary sterling is a fiat currency. It is backed only by securities, held by The Bank of England, the Central Bank of The United Kingdom.

Sterling is not backed by gold as used to be the case, many years ago.

Thus, it could be said that sterling is a '*document*', acknowledging a debt: An IOU if you will.

In contrast, a cryptocurrency has no backing, at all, other than that which is understood in the trite expression: '*Willing buyer; willing seller.*'

The **People's Republic of China (PRC)**, in the first week of February, made a determination, contained in the '*Financial News*', a medium, controlled by the **People's Bank of China (PBOC)** (), the Central Bank of the PRC, to put a blanket ban on the trading of cryptocurrencies in the country.

All websites in the PRC, relating to anything in respect of cryptocurrencies, trading in cryptocurrencies, as well as **Initial Coin Offerings (ICOs)**, including, also, foreign platforms for such activities, directly or indirectly, are, today, deemed contrary to the law of the land.

The PBOC has gone on record as stating that its actions are to prevent the financial risks, associated to trading in virtual currencies.

Whether or not the actions of the PBOC are to safeguard the sanctity of legal tender of the country is open to question, of course, but, be that as it may, it is fact that cryptocurrencies pose very significant risks to those who trade in them.

This, of course, is especially true with regard to the innocent and the ignorant.

By and large, platforms, advancing the suggestion of the profits that may be there for the taking by trading in cryptocurrencies, or the actual dealing in virtual currencies, are unregulated as are those who operate them, either directly or indirectly.

Platforms, especially created to encourage trading in cryptocurrencies, also, may be the nefarious venues of unscrupulous traders' acts.

Such acts, in securities trading on nearly all equity markets, the world over, would certainly be deemed illegal activities.

The multifarious creations of false markets in cryptocurrencies, as well as pyramid schemes are known to have taken place, only very recently, and many people have been caught out by those who can only bear the nomenclature of criminals.

A pyramid scheme (commonly known as pyramid scams) is a business model that recruits members via a promise of payments or services for enrolling others into the scheme, rather than supplying investments or sale of products or services.

### **And, In The United States Of America**

On Tuesday, February 6, 2018, at the Senate Banking Committee Hearing, harsh words were exchanged in respect of trading in cryptocurrencies and initial coin offerings, denominated in virtual currencies.

The Chairman of the Securities and Exchange Commission (the **SEC**), Mr John Clayton, said, inter alia:

*'Many ICOs (Initial Coin Offerings) are being conducted illegally. Their promoters and other participants are not following our security laws. Some people say that's because the law isn't clear. I do not buy that for a moment.'*

Mr John Clayton went to say:

*‘Those who engage in semantic gymnastics or elaborate structuring exercises in an effort to avoid having a coin be a security, are squarely in the crosshairs of our enforcement provision...’*

*‘Folks somehow got comfortable that this was new and it was okay and it was not a security, it was just some other way to raise money.’*

*‘I don’t think the gatekeepers that we rely on to assist us in making sure our securities laws are followed have done their job.’*

Answering questions in respect of the recent plethora of entities, pitching ICOs in the country, Mr John Clayton admitted that no ICO had registered with the SEC.

He said, also, that it had been estimated that ICOs raised about \$US4 billion, during the 2017 calendar year.

Mr John Clayton, also, told the Senate Banking Committee Hearing:

*‘When you engage in investing online with an offshore entity, the chances that we can do anything practical to get your money back are very, very low.’*

He continued by explaining that the SEC had released several statements, warning investors to take precautions so that they do not become victims of theft or fraud.

That more draconian measures will, in due course, be taken to protect the investing public of The United States of America with regard to the myriad illegal activities of those who continue to attempt to conduct covert activities in cryptocurrencies, flying under the SEC’s radar, using cryptocurrency trading and ICOs as ploys, including but not limited to pyramid schemes, fraud and theft, are, obviously, being considered as a matter of some importance.

It is obvious, also, that the coming American measures, aimed at being ubiquitous in order to rein in cryptocurrency trading as well as those who would encourage such activities, putting ignorant investors at considerable risk, will, sooner rather than later, start to flood the world’s financial and equity markets the moment that seen to become law in the largest-single economy of the world; and, without question, other countries – including the Hongkong Special Administrative Region and the Macau Special Administrative Region of the PRC, will seek to follow suit.

After all, is it not so that the remit of any responsible government is that the ignorant and the innocent should be safeguarded from those people/entities within society, those with constructive, criminal intentions,

seeking to take advantage of the most-gullible elements?

– End –

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