

## 金融法律热点问题

### 上海进一步排查整治虚拟货币交易场所

2019年11月14日,中国人民银行上海总部(以下简称“央行上海总部”)和上海市金融稳定联席办联合印发《关于开展虚拟货币交易场所排摸整治的通知》(以下简称“《通知》”),开展对辖区内虚拟货币交易场所的整治。

《通知》指出,针对近期借区块链技术的推广宣传炒作虚拟货币的情况,各区互联网金融整治办将对辖区内以下三种虚拟货币相关活动进行排查:一是在境内组织虚拟货币交易;二是以“区块链应用场景落地”等为由,发行“XX币”、“XX链”等形式的虚拟货币,募集资金或比特币、以太坊等虚拟货币;三是为注册在境外的ICO(即首次发行代币)项目、虚拟货币交易平台等提供宣传、引流、代理买卖等服务。《通知》要求各区整治办在11月22日前完成排查工作,一旦发现从事上述虚拟货币相关活动的互联网企业,上海各区整治办要立即报送上海市金融稳定联席办和央行上海总部,并督促企业立即整改退出,打早打小。

#### 我们的观察

在《通知》发布前,央行等七部委曾在2017年联合发布《关于防范代币发行融资风险的公告》

(以下简称“《公告》”)。《公告》指出,在中国境内以发行代币的形式(包括ICO)向投资者筹集虚拟货币的活动,本质上属于未经批准非法公开融资的行为,涉嫌从事非法金融活动,应当予以取缔。《公告》亦明确,任何组织和个人不得非法从事代币发行融资活动,且各金融机构和非银行支付机构亦不得开展代币发行融资交易相关的业务,如账户开立、登记、交易等产品和服务。

此次《通知》进一步明确了监管部门打击虚拟货币相关活动的行动纲领。在《公告》的基础之上,《通知》将为境外注册的ICO项目、虚拟货币交易平台提供宣传、引流、代理买卖等服务的机构纳入整治范围。这意味着,为境外注册的平台提供与此类ICO项目、虚拟货币交易平台相关的服务,将被认定为非法活动受到整治。此外,《通知》明确某些借区块链技术之名进行的虚拟货币发行或募集资金活动也属整治范围亦体现“实质重于形式”的监管原则。

我们将持续关注并及时与我们的客户分享最新的进展。

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## Financial

### China Further Clamps Down on Virtual Currency Platforms

On November 14, 2019 the People's Bank of China Shanghai Head Office (PBOC Shanghai) and the Shanghai Joint Committee of Financial Stability (SJCFS) jointly issued the *Circular on Investigating and Clamping Down on Trading Platforms for Virtual Currencies* ("Circular") to further tidy up virtual currency trading venues in Shanghai.

The Circular points out that recently there has been a resurgence of virtual currency speculation under the guise of block chain promotion. In this context, local authorities shall investigate three types of virtual currency related activities, namely, (i) organizing virtual currency trading activities within the territory of PRC; (ii) on the pretext of block chain applications, issuing digital currencies or virtual currencies such as Bitcoin or Ethereum to raise funds from investors; or (iii) facilitating the promotion, solicitation or brokerage for overseas-registered initial coin offering (ICO) projects or virtual currency trading platforms.

The Circular urged local authorities to complete the investigations before November 22, 2019. Upon discovering any enterprise engaging in the abovementioned virtual currency related activities, local authorities shall promptly report the activities to both the PBOC Shanghai and the SJCFS and shall alert the enterprise to cease its relevant activities, nipping virtual currency speculation in

the bud.

#### Our Observations

Prior to the issuance of the Circular, in 2017, seven regulators including the PBOC jointly issued the *Announcement on Preventing Risks of Fundraising through Coin Offerings* ("Announcement"). Pursuant to the Announcement, raising virtual currencies from investors in the PRC through coin offerings (including ICO) is classified as an unauthorized and illegal public fundraising. Further, this fundraising is alleged to be an illegal financial activity and thus shall be curtailed. The Announcement also provides that no entity or individual shall engage in illegal fundraising through coin offerings. Moreover, financial institutions or non-bank payment agencies shall not conduct any business related to fundraising through coin offerings, such as opening accounts or providing services on registration and trading.

The Circular reiterates the regulatory determination to rein in virtual currency related activities. Further to the Announcement, the Circular addresses activities of promotion, solicitation or brokerage for overseas-registered initial coin offering (ICO) projects or virtual currency trading platforms into the scope of regulation. Accordingly, offering services relating

to ICO projects or virtual currency trading platforms registered overseas is explicitly determined to be an illegal activity that shall be prohibited. In addition, the Circular specifies that issuance of virtual currencies or fundraising activities under the guise of block chain promotion are within the scope of the activities targeted for

clamp-down, which embodies the regulatory principle of “substance over form”.

We will continue to monitor the situation and keep our clients apprised of any important developments.

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