

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Seventeenth Congress
First Regular Session
House Bill No. **5436**



Introduced by Congressman Dakila Carlo E. Cua

**AN ACT REGULATING EQUITY CROWDFUNDING,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8799,
OTHERWISE KNOWN AS "THE SECURITIES REGULATION
CODE"**

EXPLANATORY NOTE

The Securities Regulation Code (Republic Act No. 8799) and other laws provide for the regulation of the issuance and trade of securities in the country. The purpose of the Code is to broaden participation of ownership, encourage the growth of capital markets and protect investors. The crowdfunding movement is in line with this aim, and its expansion in the Philippine market, if properly executed, will be beneficial to the national economy.

The existing legislation effectively regulates traditional forms of financing and raising capital. However, with the development and proliferation of new technological and social advancements in relation to funding options, there is a compelling need to enhance the current law in order to better address the specific issues which arise from equity crowdfunding campaigns.

By defining crowdfunding and delineating specific rules regarding the registration and regulation of both platforms and campaigns, the crowdfunding movement may be allowed to flourish and grow in the Philippines, while ensuring that investors and their investments are still adequately protected by updated regulations and reportorial requirements.

In view of the foregoing, passage of this bill is urgently sought.


DAKILA CARLO E. CUA

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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION ONE. Section 3 of Republic Act No. 8799 is hereby amended to add the following definitions:

1. "Equity Crowdfunding" shall refer to transactions involving the offer or sale of securities by an issuer, which is conducted through a funding portal that complies with the requirements of this Code. For purposes of this Act, an offer or sale made by equity crowdfunding is not considered as a public offer.
2. "Funding Portal" shall refer to persons acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely in relation to equity crowdfunding offerings. For purposes of this Act, a funding portal is not considered as a broker or dealer.

SECTION TWO. Section 10.1 regarding exempt transactions, of Republic Act No. 8799 is hereby amended to add the following exemption:

1. Transactions involving the offer or sale of securities by an issuer, provided that:
 - a. The issuer complies with the requirements of this Code;
 - b. The transaction is conducted through a funding portal that complies with the requirements of this Code;
 - c. The total amount of securities sold by the issuer during the 12 month period immediately preceding the date of such transaction is not more than Sixty Million Philippine currency;
 - d. The total amount of securities sold to any investor by an issuer during the 12 month period immediately preceding the date of such transaction is not greater than:

1. 10 percent of the annual income or net worth of such investor, as applicable, if either value is less than PhP 300,000; and
2. 20 percent of the annual income or net worth of such investor, as applicable, not to exceed 50 percent of the lesser value, if the annual income or net worth is equal to or more than PhP 300,000; and
3. Any amount not in excess of 100 percent of the annual income or net worth (whichever is less) of an investor designated as a qualified buyer.

SECTION THREE. Section 10.4 of Republic Act No. 8799 is hereby amended to add the following requirements for the qualification of a funding portal:

A funding portal must:

1. Provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall deem appropriate;
2. Ensure that each investor:
 - a. Reviews investor education information;
 - b. Positively affirms that he/she understands that he/she is risking the loss of the entire investment, and that the investor could bear such a loss;
 - c. Answers questions demonstrating:
 1. An understanding of the level of risk generally involved in investments in start-ups and MSMEs;
 2. An understanding of the risk of illiquidity;
 3. An understanding of other such matters as the Commission may determine are appropriate;
3. Take measures to reduce the risk of fraud with respect to such transactions, including obtaining a background and securities enforcement regulatory history check on the officers holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by the portal;
4. Ensure that all the offerings are only provided to the issuer when the target funding amount is reached or exceeded;
5. Make efforts to determine the compliance of issuers and investors with the applicable maximum amounts of investments
6. Take steps to protect the privacy of information collected from investors.

SECTION FOUR. Section 10.4 of Republic Act No. 8799 is hereby amended to add the following requirements for the qualification of an equity crowdfunding securities issuer:

For the purposes of equity crowdfunding, an issuer who offers or sells securities must:

1. File with the Commission and provide to all investors and the relevant funding portal, and make available to all potential investors:
 - a. The full name, legal status, physical address, contact information and website address of the issuer;
 - b. The full names of the directors, officers, and other persons holding more than 20 percent of the shares of the issuer;
 - c. A description of the business of the issuer;
 - d. A description of the stated purpose and intended use of the funding sought;
 - e. The target funding amount, offer period, and relevant regular updates regarding progress in meeting the target amount;
 - f. The number, class, rights and privileges, restrictions, and price of each share offered, together with the percentage these offered shares bear to the issuer's total authorized capital stock;
 - g. The price to the public of the securities offered, or the method to determine that price;
 - h. A description of the ownership and capital structure of the issuer;
 - i. A description of the financial condition of the issuer, including the following financial statements:
 - a. For issuers whose total target funding amount in the preceding 12 month period is PhP 60 Million or less:
 - i. The income tax returns filed by the issuer for the most recently completed year; and
 - ii. Financial statements of the issuer, which shall be certified by the CEO (or equivalent) to be true and complete in all material respects;
 - b. For issuers whose total target funding amount in the preceding 12 month period is more than PhP 60 Million, but not more than PhP 100 Million -- Financial statements reviewed and certified by an independent Certified Public Accountant; and

- c. For issuers whose total target funding amount in the preceding 12 month period is in excess of PhP 100 Million -- Audited financial statements;
2. Not advertise the terms of the offering, except for notices which direct potential investors to the relevant funding portal; and
3. At least annually file with the Commission and provide investors with reports of the operations and financial statements of the issuer.

SECTION FIVE. Section 12, in relation to Section 8.1 of Republic Act No. 8799 is hereby amended to add the following exemption from registration:

The SEC shall, by rule, exempt a registered funding portal from the requirement to register as a broker or dealer under the Code, provided that such funding portal remains subject to the examination, enforcement and other rulemaking authority of the Commission.

SECTION SIX. A new provision in regard to restriction on resale of equity crowdfunding securities is hereby added to Republic Act No. 8799 as follows:

Securities issued pursuant to equity crowdfunding may not be transferred by the purchaser during the 12 month period immediately following the date of purchase of such securities, except:

1. To the issuer of the securities; or
2. To a member of the family of the purchaser in connection with the death or annulment of the purchaser, or other analogous circumstance.

SECTION SEVEN. A new provision in regard to review of amounts relevant to equity crowdfunding securities is hereby added to Republic Act No. 8799 as follows:

The stated amounts pertaining to limitations in relation to investments and offers in equity crowdfunding are subject to re-evaluation and adjustment by the Commission:

1. at least semi-annually for the first three years following the enactment of equity crowdfunding legislation;
2. at least annually for the remainder of the first decade following the enactment of equity crowdfunding legislation; and
3. at least bi-annually thereafter.

SECTION EIGHT. *Implementing Rules and Regulations.* The Securities and Exchange Commission, shall, within 180 days from the enactment of this law, promulgate Rules and Regulations implementing the same.

SECTION NINE. *Separability Clause.* If any provision of this Act or the application thereof to any person or circumstance is held to be void, or unconstitutional, any other provision not affected thereby shall remain in full force and effect.

SECTION TEN. *Repealing Clause.* All laws, decrees, executive orders, rules and regulations or parts thereof as are inconsistent with this Act are hereby repealed, amended or modified accordingly: *Provided*, that the penal provisions shall not apply to acts done prior to the effectivity of the Securities Regulation Code on July 19, 2000.

SECTION ELEVEN. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.