

## A Complete Guide to the Regulations on **Cryptocurrency** and **Digital Token Offerings** in Thailand

2021 Edition

(The law as of 1 May 2021)



# Digital Assets in Thailand

2021 saw considerable developments in the digital asset landscape. The public has become more aware of digital assets as an alternative market for investment and fundraising. Several business operators, both emerging technology entrepreneurs and well-established traditional service providers, have made their way into the world of the blockchain-based investment.

As the development of digital asset businesses is still in the initial stage, the market continues to embrace new possibilities. Many look to the tempting prospect of tokenizing illiquid assets to improve commercial liquidity, particularly real estate assets. Some seek to diversify and expand the horizon of blockchain-based investments through the introduction of innovative digital asset businesses and supporting services.



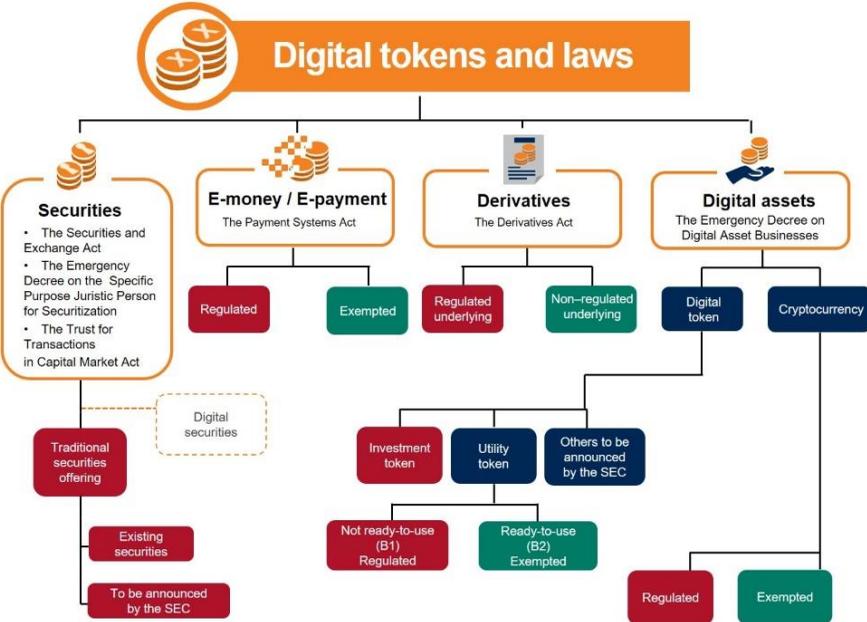
Regulators in Thailand have not fallen behind these developments. Building on the regulatory foundations they have been establishing in recent years, the Office of the Securities and Exchange Commission (the "**SEC Office**") has ushered in new regulations to support and solidify recent developments in the digital asset industry.

To keep up with these dynamic and continuous developments in 2021, we have revised this publication to provide an overview of the regulations pertaining to digital assets in Thailand.

# Legal analysis



The starting point for the understanding of digital asset regulations in Thailand is the Emergency Decree on Digital Asset Businesses, B.E. 2561 (2018) (the "**Digital Asset Decree**"), which specifies a **new asset class** (the "**Digital Assets**") to be regulated under Thai law. From its effective date (14 May 2018), any business operator who wishes to conduct any activity regarding Digital Assets must take this law into account.



To determine whether the digital instrument you are planning to issue would fall under the definition of "Digital Assets", **you must consider the Digital Asset Decree as well as other existing laws**, including the

Securities and Exchange Act; the Payment Systems Act; the Derivatives Act; etc.

Certain types of instruments or assets that utilize innovative technology or digital elements, such as securities under the Securities and Exchange Act; e-money under the Payment Systems Act; and option instruments under the Derivatives Act, are regulated under other specific laws and regulations, not the Digital Asset Decree.

To illustrate, digital securities are to be regulated under the purview of the Securities and Exchange Act, and not the Digital Asset Decree, because their core characteristics fall under the definition of what constitutes "securities."

Some types of instruments or assets that did not fall under the scope of existing laws before 14 May 2018 might now be regulated under the Digital Asset Decree, if they have specific characteristics that fall within the definition of "Digital Assets" as prescribed in the Digital Asset Decree.



# Digital Assets law

The following is an overview of how Digital Assets are regulated in Thailand.

## Thailand's regulatory regime



### Emergency Decree on Digital Asset Businesses, B.E. 2561

1. Offering of digital tokens
  - Digital token
  - Cryptocurrency
  - Issuer
  - Portal
  
2. Digital asset businesses
  - Digital asset exchange
  - Digital asset broker
  - Digital asset dealer
  - Digital asset fund manager
  - Digital asset advisor



### Emergency Decree on the Amendment of the Revenue Code (No. 19), B.E. 2561

1. New types of income
  - Share of the profit or any benefit derived from holding or having possession of digital tokens
  - Capital gains from the transfer of a cryptocurrency or digital token
  
2. Withholding tax obligations

# 1 How can we differentiate between cryptocurrencies and digital tokens, and how are they regulated?

Under Thai law, Digital Assets comprise two types of assets: **cryptocurrencies** and **digital tokens**.



### Cryptocurrency

- Electronic data unit
- Created on an electronic system or network
- Being a medium for exchanging goods, services, rights, or Digital Assets
- Other electronic data unit as designated by the SEC



### Digital Token

- Electronic data unit
- Created on an electronic system or network
- For determining:
  - (1) Right of an investor to invest in any project or business (i.e. investment token); or
  - (2) Right to receive specific goods, services, or other right as agreed (i.e. utility token)
- Other electronic data unit as designated by the SEC

However, a cryptocurrency can be deemed a digital token as well if the issuer intends to raise funds from the public, and if the cryptocurrency: a) determines the right of an investor to invest in any particular project or business; or b) determines the right to receive specific goods, services, or any other right as agreed upon by the parties.

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The key difference between these two types of assets is that a **cryptocurrency** is created to serve a particular purpose as a **medium of exchange**, which might be for goods, services, or other rights, or as consideration for trading with other Digital Assets. On the other hand, a **digital token** is generated to be used as a **determinant of rights**, which could be rights as an investor or the right to receive specific goods or services.

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Any Digital Asset that falls under the definition of a cryptocurrency or digital token will be regulated under this law, except for certain Digital Assets that fall under exemptions as stipulated under the current law.

The SEC Office periodically issues a list of approved cryptocurrencies, which means that these cryptocurrencies are allowed to be used in the two following scenarios.

- If the digital token issuer or Digital asset business operator wishes to receive cryptocurrencies as remuneration or in consideration for a transaction, such cryptocurrencies must be those that are listed by the SEC Office, and must also be obtained from a sale, exchange, or deposit with an approved Digital asset business operator.
- Digital asset exchanges are only allowed to trade or exchange Digital Assets for Thai Baht ("**THB**") or for the cryptocurrencies listed by the SEC Office.

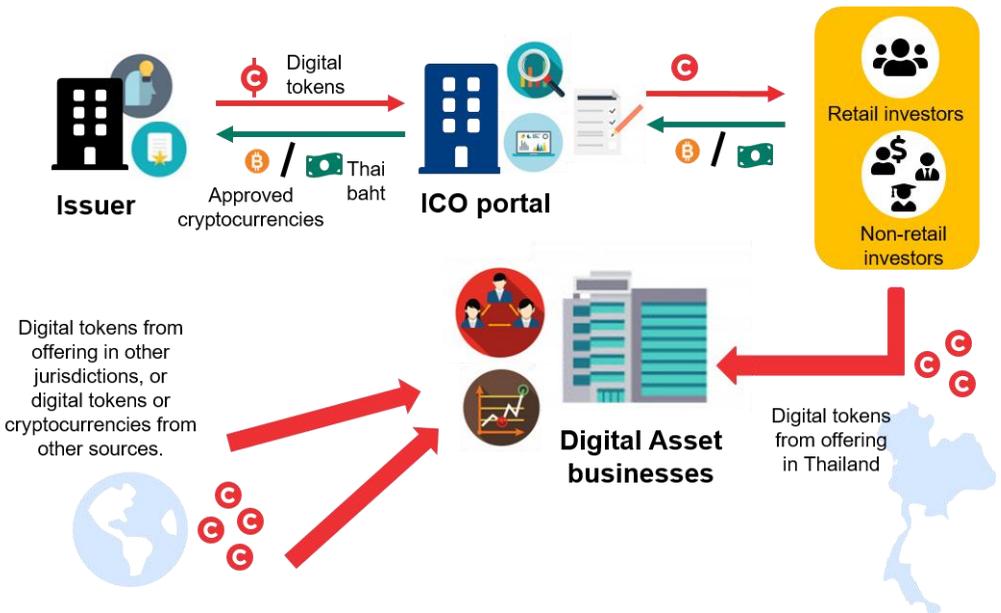
In any case, cryptocurrencies are not considered legal tender. As of 1 May 2021, these approved cryptocurrencies are **Bitcoin (BTC); Ether (ETH); XRP; and Stellar (XLM)**. The list may be updated from time to time.

## 2 Insights into Thailand's regulatory regime on the offering of cryptocurrencies and digital tokens

There are two regulated activities under the Digital Asset Businesses Decree:

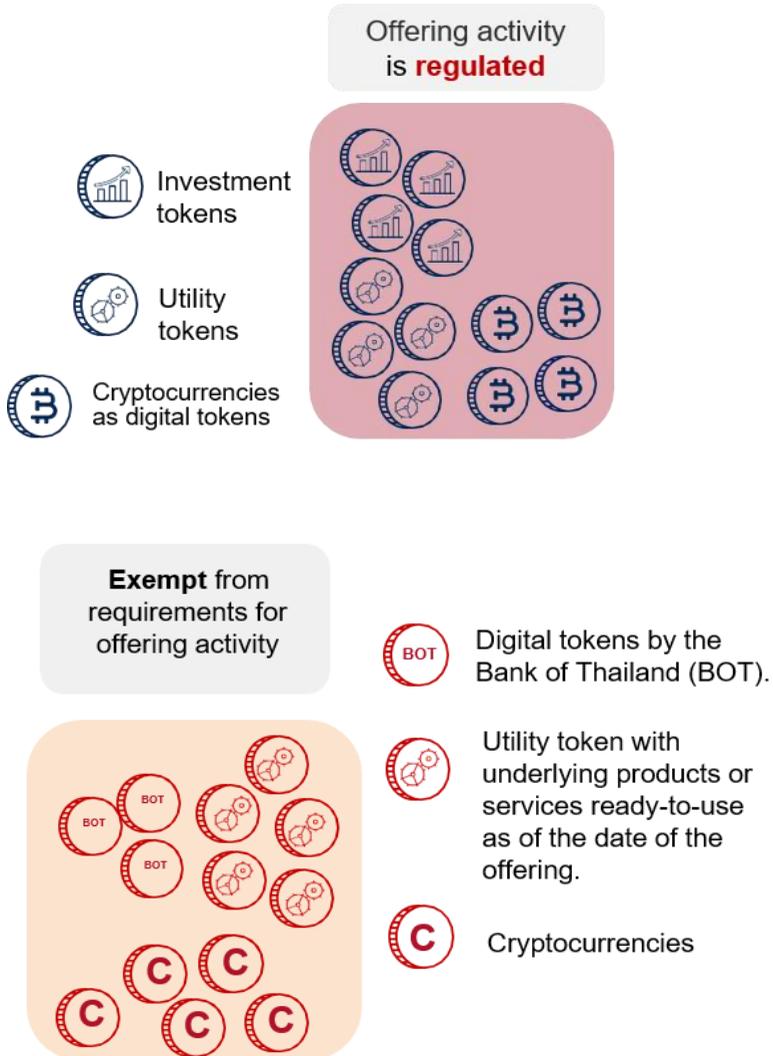
- **Offering of digital tokens to the public**
- **Operation of digital asset businesses**

### Thailand's regulatory regime on Digital Assets



# 1. Offering of digital tokens to the public

## A. Digital token offering



To offer the regulated digital tokens (e.g. investment tokens, utility tokens that the underlying products or services are not ready-to-use as of the date of offering) to the public, the issuer of digital tokens must (i) have the specified qualifications; (ii) obtain an approval from the SEC Office; and file a registration statement for the offering of digital tokens and the draft prospectus to the SEC. The offering must be done through the approved portal.

## **B. Exempt offering: limited offering**

Offering of regulated digital tokens that contains **one of the following elements is considered a limited offering** and therefore, it is deemed that the issuer **has already obtained approval from the SEC**



**Office, and is exempt from the requirements for filing of a registration statement and draft prospectus.**

- The offering is made to any one of these types of investors: institutional; ultra-high net worth; venture capital; or private equity.
- The offering is made to a specific investor who has a specific relationship with the issuer as prescribed in the regulation. The offering must be made to not more than 50 people within a 12-month period.
- The offering has a total value not exceeding THB 20 million within a 12-month period.

However, the issuer must: (i) comply with other relevant regulations prescribed by the SEC; and (ii) create and disclose the report on the sale of digital tokens offering, and the information regarding the holding of digital tokens by each type of investor.

### C. Real estate digital token offering

This year, the SEC Office has issued a set of new regulations governing digital token offerings that refer to, or for which the cash flow comes from, real estate. This new type of offering must comply with the key **additional following conditions and requirements**, which are summarized below.



#### Key offering requirements

Generally, the issuance of digital tokens to the public will be subject to the SEC's approval. To obtain such approval, the issuer of real estate-backed tokens must comply with the following additional requirements.

##### ■ Real estate

The construction of the underlying real estate **must be completed and ready for use** without being subject to any property rights or disputes. There is an exception where the token issuer has considered and issued an opinion in writing to the effect that these will not materially

affect its use, and that the terms on which the real estate is acquired will be beneficial for digital tokens holders in general.

#### ■ Investment value

The amount or value of the investment in real estate **must not be less than 80% of the project's amount or value**, or the aggregate value of the real estate to be invested **must not be less than THB 500 million**.

#### ■ Due diligence

Due diligence **must have been conducted on the real estate** so as to comply with specified requirements, with complete and sufficient information on risk factors disclosed in the registration statement and draft prospectus.



#### ■ Appraisal

There must be a **full appraisal of title documents** for disclosing information to investors. This **must be carried out by at least two appraisers**, who have been approved by the Office of the SEC, or who fulfill specific requirements if the real estate to be invested is located overseas.

## ■ Legal formalities

The **contract to acquire the real estate** must not contain any agreement or obligations that may prevent the sale of the real estate at a fair price. A draft trust deed must be prepared and fulfill the requirements in the relevant regulations. There must be a mechanism **to ensure** that the issuer **will transfer assets to the trustee** as an asset pool of the trust.

## ■ Types of tokens

If there are **different types of digital tokens, the same type of digital token must have equal rights and benefits,**



while each type of digital token can have different rights and benefits but only in respect of the following:

- (i) benefits or return of capital to holders of digital tokens
- (ii) fees or expenses to be claimed from holders of digital tokens
- (iii) other differences that the issuer may demonstrate as the practical categorization of digital tokens considering the benefits of holders of digital tokens in general and possible impacts on holders of digital tokens

## Establishment of trust

The issuer must set up a trust with any of the following elements:



- Trust for the **holding of ownership or right of possession over real estate.**
- Trust for **investment in leasehold rights in a real estate.**
- Trust which holds **shares in a special purpose vehicle (SPV) that holds the ownership or right of possession over real estate**, whereby:
  - the shareholding is at least 75% of the total number of issued shares representing at least 75% of the total voting rights of the SPV
  - the shareholding is for the benefit of token holders to prevent assets of the SPV from being distributed, sold, transferred or encumbered without the trustee's approval, which must comply with the trust deed.

## Requirements for a trustee



The trustee must be appointed with the specified roles and qualifications as set out in the regulations.

## D. Relevant parties

### ■ Issuers



An issuer must obtain **prior approval** from the SEC Office and must file a registration statement and draft prospectus with the SEC Office before the public offering. The offering of digital tokens can only be done through the **SEC-approved portal**.

### ■ Portals

Once a portal has received SEC approval, it is obligated by law to conduct **due diligence and a screening process**.

However, inspection by the portal is not the final stage of approval for a prospective issuer, as the SEC Office may still reject any proposed digital tokens offering project if it believes that the project conflicts with a public policy, or on any other reasonable grounds.



As of 1 May 2021, the SEC had approved four entities as licensed portals in Thailand. You may consider engaging any of these approved entities if you wish to offer digital tokens to the public in Thailand.

(See: <https://www.sec.or.th/TH/Pages/Shortcut/DigitalAsset.aspx>)

## (2) Operation of digital asset businesses

### A. Regulated activities

- Generally, all Digital asset business operators are subject to licensing and regulatory requirements. However, the following scenarios are exempt.
  - Business operations by the Bank of Thailand ("**BOT**") that could be considered Digital asset businesses, provided that the Digital Assets are issued and processed by the BOT.
  - Business operations by an exchange, broker, or dealer offering digital token exchange services, provided that: a) the exchange is done solely for the same types of digital token; and b) the digital tokens are utility tokens (or other digital tokens that entitle the holder to receive the right from utility tokens), and the underlying product or service must be ready to use as of the date of the offering.
  - Digital asset broker or dealer that provides sale or purchase services only for Digital Assets, whose issuer has pegged the value against the THB at a fixed exchange rate, and has a clear mechanism to fix the value (e.g. THB-pegged stable coins, subject to their characteristics). The sale or purchase of Digital Assets must only be done in exchange for THB at the specified set value, and the payment must be made

through a financial institution under the anti-money laundering law.

Please note, however, that the issuer of stable coins will also need to take into account other relevant laws, such as payment system law and currency law, under supervision of the BOT and the MOF.

## B. Regulated parties

- Digital asset businesses include:



### **Digital asset exchange**

This means a center or a network established to buy, sell, or exchange Digital Assets, by matching or arranging counterparties, or by providing a system or facilitating a person who is willing to buy, sell, or exchange Digital Assets, in order to be able to enter into an agreement or match the order, in the normal course of business. However, this does not include systems or networks in the manner as specified by the SEC Office.



### **Digital asset broker**

This means a person who services or holds himself out to the public as available to be a broker or agent for any person in the purchase, sale, or exchange of Digital Assets to other persons in the normal course of business, for a commission, fee, or other form of

remuneration. However, this does not include the brokers or agents operating in the manner as specified in SEC notifications.



### **Digital asset dealer**

This means a person who services or holds himself out to the public as available to purchase, sell, or exchange Digital Assets on his own account in the normal course of business, outside of a Digital asset exchange. However, this does not include the dealers operating in the manner as specified in SEC notifications.



### **Digital asset fund manager**

This means a person who manages, or holds itself to the public as available to manage assets for other persons in order to seek benefit from Digital Assets in the normal course of business. However, this does not include fund managers in the manner as specified in SEC notifications.



### **Digital asset advisor**

This means a person who provides advice to the public, whether directly or indirectly, regarding the value of Digital Assets, or the appropriateness of the investment into them, or regarding the purchase, sale, or exchange of any Digital Asset, in the normal course of business,

for a fee or other remuneration. However, this does not include advisors who provide advice as part of or in connection with the operation of a Digital asset exchange, Digital asset brokerage, Digital asset dealership, or Digital asset fund management, or the provision of advice to the public in the manner as specified in the notification of the SEC.

- Any other business designated by the Ministry of Finance ("**MOF**"). These operators must obtain a license from the MOF upon the recommendation of the SEC, and must comply with certain regulatory requirements.

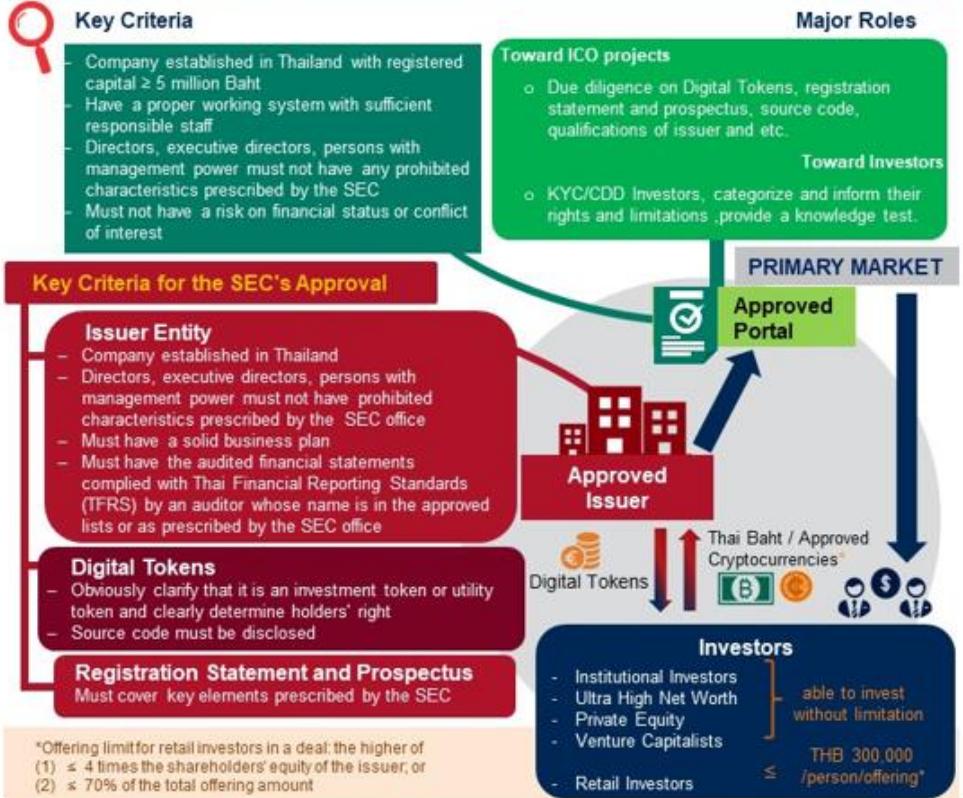


- For the list of licensed entities, please visit the SEC website (<https://www.sec.or.th/TH/Pages/Shortcut/DigitalAsset.aspx>)
- On 27 January 2021, the SEC published a public hearing regarding custodial wallet providers. The SEC proposed to regulate Digital asset custodial wallet providers (i.e. persons who provide a custodial wallet service by managing the cryptographic key with the power to access customers' Digital Assets in the normal course of business for or in exchange of fees or remuneration). The license applicant could be a bank; securities company; other financial institution; digital asset business; or a newly established company. However, the applicant must ensure that it has all of the qualifications and meet all the requirements to be specified in the relevant regulations to be prescribed by the SEC.

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## What role can you play and what are the implications?

### (1) Offering of Digital Tokens to the Public Baker McKenzie



### (2) Digital Asset Businesses





## Entities planning to issue digital tokens

### A. Issuer

- Public offering of newly offered digital tokens must be done by a company (either private or public) **established in Thailand**.
- The directors, executive directors, or persons with management power **must not have any prohibited characteristics** prescribed by the SEC Office (e.g. regarding bankruptcy or criminal offenses).
- A company intending to conduct digital token offerings does not have to operate in the technology industry or apply blockchain technology to its business. However, it must have a **fundamentally sound business plan** with audited financial statements in compliance with the Thai Financial Reporting Standards, by an auditor recognized by the SEC Office, or must meet the qualifications prescribed by the SEC Office.
- A company must **disclose its ongoing business performance and financial statements** in accordance with the regulations prescribed by the SEC Office.

## B. Digital token

- A digital token must be explicitly characterized as an investment token or a utility token, and the company must clearly state the rights of the holder or investor, as well as other material information, in the draft prospectus.
- The source code of the underlying smart contract must be disclosed as prescribed by the SEC Office, and periodic reporting pertaining to the status and progress of the project must be submitted as prescribed under the regulations.
- The source code in the smart contract or any other mechanisms used in place of a smart contract (if any) must contain details that correspond with the information in the draft prospectus.



## C. Registration statement and prospectus

- The issuer must file a registration statement and a draft prospectus to obtain approval from the SEC Office before the offering. The disclosure of information and the marketing of the digital token offering must comply with the relevant regulations.

- The registration statement and draft prospectus must include important information as prescribed in the regulation, for example:



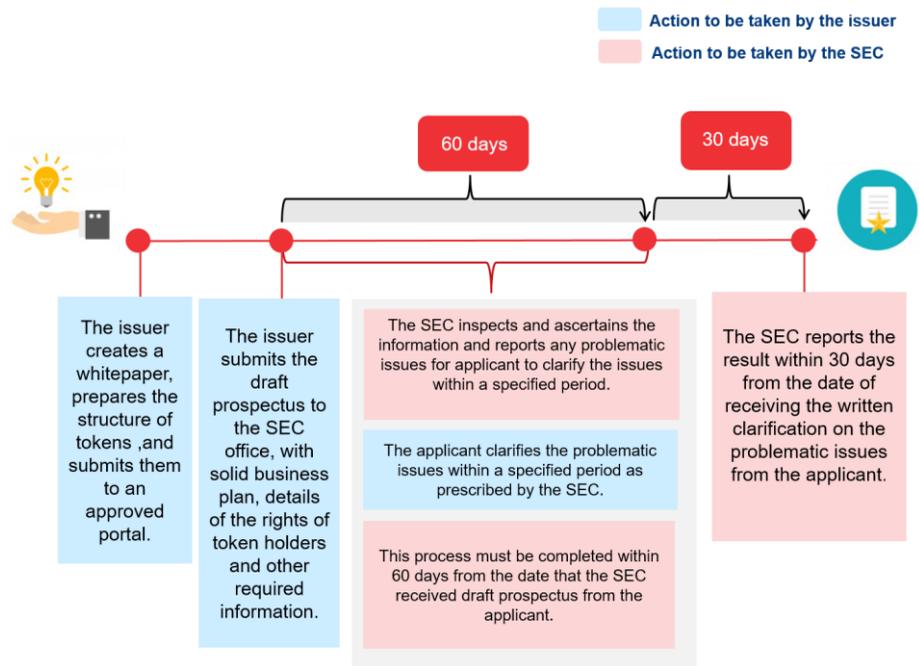
- fact sheet providing an overview of the characteristics of the issuer and the digital tokens;
- information regarding the issuer, including the intended use of the proceeds;
- the issuer's business plan;
- information regarding the digital tokens, including any special characteristics and significant risks;
- information about the digital token offering; and
- certification that the information described above is true and correct, signed by the personnel specified under the law.

## D. Offering process

- An offering may only be done through an **approved portal** and to the following investors.
  - Institutional, ultra-high-net worth, private equity, and venture capital investors, with no limit on investment.
  - Retail investors. The SEC Office has placed an investment limit of THB 300,000 per person per round of offering. In other words, a retail investor may only invest up to THB 300,000 in a particular digital token offering, but is free to invest up to THB 300,000 in other digital token offerings.
  - With respect to the issuer, the offering limit for retail investors in each round of offering is the higher of  $\leq$  four times the shareholders' equity of the issuer, and  $\leq$  70% of the total offering amount per each round.
- The issuer may receive "THB" or "approved cryptocurrencies by the SEC Office" (as discussed above) for payment for the digital tokens. These cryptocurrencies must be obtained from a sale, exchange, or deposit with an approved Digital asset business.



## E. Timeline



## F. Offering Period

- The issuer must complete the sale of digital tokens within six months from the date the SEC approves the digital tokens offering.

## G. Fees

- Approval application fees: THB 300,000.
  - Submission of a registration statement and prospectus (filing for initial disclosure of information): THB 300,000.
  - Submission of a registration statement and prospectus (filing for effectiveness): 0.05% of the total value of digital tokens offered for sale.



## Portal

### A. Portal

- A portal business must obtain **prior approval** from the SEC before it can begin operations.
- A portal must be a company (either private or public) established in Thailand with registered capital of not less than THB 5 million, with a proper operation system, suitable management structure, and sufficient responsible personnel to operate the portal. The financial status of the portal operator must be good and should not pose any potential risk to its customers.
- A portal and its operation system must comply with the SEC Notification regarding the security of IT systems.
- The directors, executive directors, and people with management power over the portal must not have any prohibited characteristics as prescribed by the SEC.
- The major responsibilities of portals are similar to financial advisors ("**FAs**") in traditional IPO deals and funding portals in crowdfunding deals.

- **Key responsibilities regarding the offering project:**

- the portal must conduct an analysis to ensure the characteristics of the digital tokens to be offered; the qualifications of the issuer; the accuracy of the information prescribed in the registration statement and prospectus; and the accuracy of any information disclosed on the portal as required by the SEC Office;
- the portal must provide opinions to the SEC on whether the offering project is fully qualified and meets the requirements prescribed by law; and
- the portal must provide knowledge and advice to the issuer about its duties and responsibilities towards investors, including the relevant rules, conditions, and procedures.

- **Key responsibilities regarding investors:**

the portal must perform the "know your customer" ("KYC") and customer due diligence ("CDD") procedures for all investors, and must categorize and inform investors of their rights and limitations, and provide a knowledge test.



- Portals will be considered "financial institutions" under the anti-money laundering ("**AML**") and counter-terrorism financing ("**CTF**") laws, and must comply with several obligations, including KYC/CDD and transaction reporting.

## **B. Timeline**

- The SEC will consider granting approval for a portal within 90 days from the date the SEC Office receives all of the applications and documents as prescribed in the public manuals from the portal.
- The portal must begin its business operations within 180 days from the date it obtains approval from the SEC.

## **C. Fees<sup>1</sup>**

- Approval application fee: THB 50,000.
- Annual fee: THB 100,000.



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<sup>1</sup> Where the applicant's business is in its first year of operation, the fee is to be paid to the SEC prior to the date the business commences.



## Investors

- For public offerings of digital tokens:
  - Institutional, ultra-high-net worth, private equity, and venture capital investors: No limit.
  - Retail investors: THB 300,000 per person per round of offering.
- Trading cryptocurrencies or digital tokens on an exchange or with a dealer or a broker: no limit.
- For investments in both the primary and the secondary market, the investor can be Thai or foreign





## Operators of Digital asset businesses

### A. Digital asset exchange, broker, dealer

	Digital asset exchange	Digital asset broker	Digital asset dealer
<b>Required license under the Digital Asset Decree</b>	License from the MOF upon the recommendation of the SEC.		
<b>Key qualifications for license application</b>	Company established in Thailand. A Digital asset exchange must not be a Digital asset dealer, and vice versa.		
<b>Required paid-up registered capital</b>	<ul style="list-style-type: none"> <li>▪ For an exchange ≥ <b>THB 50 million</b></li> <li>▪ For a non-asset keeping exchange ≥ <b>THB 10 million</b></li> <li>▪ For an asset-keeping exchange that has no ability to access or transfer customers' assets without their approval on one-time basis ≥ <b>THB 10 million</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ For a broker ≥ <b>THB 25 million</b></li> <li>▪ For a non-asset keeping broker ≥ <b>THB 1 million</b></li> <li>▪ For an asset-keeping broker that has no ability to access or transfer customers' assets without their approval on one-time basis ≥ <b>THB 5 million</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ For a dealer ≥ <b>THB 5 million</b></li> </ul>
<b>Net Capital (NC) maintenance</b>	Exchanges, brokers, and dealers must maintain net capital as prescribed by the relevant regulations.		
<b>Consideration under AML/CTF laws</b>	The operator will be considered a " <b>financial institution</b> " under AML/CTF laws and must comply with several obligations, including KYC/CDD and transaction reporting.		

	Digital asset exchange	Digital asset broker	Digital asset dealer
<b>Fees</b>	<ul style="list-style-type: none"> <li>License fee: <b>THB 2.5 million</b> for operating a cryptocurrencies exchange; <b>THB 2.5 million</b> for operating a digital tokens exchange.</li> <li>Annual fee: <b>0.002%</b> of the total trading value; the annual fee is in the range of <b>THB 0.5 million – THB 20 million</b>.</li> </ul>	<ul style="list-style-type: none"> <li>License fee: <b>THB 1.25 million</b> for operating a cryptocurrencies brokerage; <b>THB 1.25 million</b> for operating a digital tokens brokerage.</li> <li>Annual fee: <b>0.001%</b> of the total trading value; the annual fee is in the range of <b>THB 0.25 million – THB 10 million</b>.</li> </ul>	<ul style="list-style-type: none"> <li>License fee: <b>THB 1 million</b> for a cryptocurrencies dealer; <b>THB 1 million</b> for a digital tokens dealer.</li> <li>Annual fee: <b>1%</b> of the profit (capital gain) from the trading; the annual fee is charged within the range of <b>THB 0.1 million – THB 5 million</b>.</li> </ul>
License application fee: <b>THB 30,000</b> for each license.			



## B. Digital asset advisor and fund manager

	Digital asset fund manager	Digital asset advisor
<b>Required license under the Digital Asset Decree</b>	License from the MOF upon the recommendation of the SEC.	
<b>Key qualifications for license application</b>	Company established in Thailand.	
<b>Required paid-up registered capital</b>	<ul style="list-style-type: none"> <li>▪ For asset-keeping managers, or managers who provide services to non-institutional customers ≥ <b>THB 25 million</b></li> <li>▪ For non-asset keeping managers who provide services only to institutional customers ≥ <b>THB 10 million</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ For an advisor ≥ <b>THB 1 million</b></li> </ul>
<b>Net Capital (NC) maintenance</b>	<ul style="list-style-type: none"> <li>▪ fund manager and advisor must maintain net capital as prescribed by the relevant regulations.</li> </ul>	
<b>Consideration under AML/CTF laws</b>	The operator will be considered as a " <b>financial institution</b> " under AML/CTF laws and must comply with several obligations, including KYC/CDD and transaction reporting.	

	Digital asset fund manager	Digital asset advisor
<b>Fees</b>	<ul style="list-style-type: none"> <li>License fee: <b>THB 0.5 million</b> for operating as a cryptocurrencies fund manager; <b>THB 0.5 million</b> for operating as a digital tokens fund manager.</li> <li>Annual fee: <b>0.001%</b> of the total value under management each calendar year; the annual fee is in the range of <b>THB 0.25 million – THB 10 million</b>.</li> </ul>	<ul style="list-style-type: none"> <li>License fee: <b>THB 15,000</b> for operating a cryptocurrencies advisor; <b>THB 15,000</b> for operating as a digital tokens adviser.</li> <li>Annual fee: <b>THB 25,000</b>.</li> </ul>
	License application fee: <b>THB 30,000</b> for each license.	



## **C. On-going business requirements for digital asset businesses**

There are a number of key additional business requirements that digital asset business operators should take into account.

### **■ Custody of customers' assets**

Asset-keeping business operators must keep no less than 90% of the total customers' assets in a cold wallet. Operators may keep the assets in their own cold wallet if the total value of the customers' assets is below THB 15 million. If the total value is THB 15 million or above, and the operators keeps the assets for more than five consecutive days, the assets must be kept in a custodian service provider's wallet.

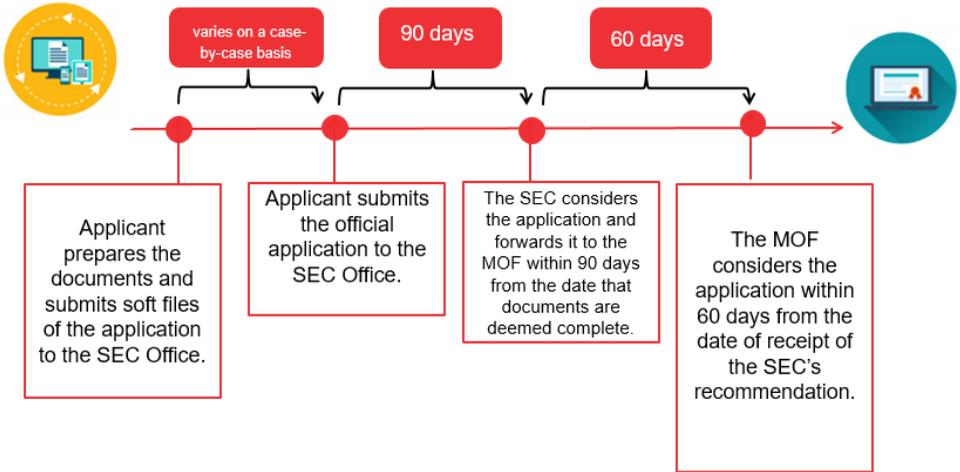
### **■ Operation of other businesses**

If a business wishes to operate a new business line, it must be able to demonstrate that the new business line supports the core business, and that it will not create a conflict of interest to the digital asset business, or pose risk to the customers' assets. An approval from the SEC must be granted on a case-by-case basis.

### **■ Outsourcing**

Business operators wishing to outsource key aspects of their businesses must be able to demonstrate that they have implemented appropriate measures as prescribed by the relevant regulation, and the outsourcing agreement must have the substance as prescribed by the SEC.

## D. Timeline



The digital asset business operator must begin its business operations within 180 days from the date that it obtains approval from the SEC.



## Financial institution participation

Scope of potential business operations under the BOT Circular Letter No. TorPorTor.ForNorSor.(23) Wor.1759/2561, dated 1 August 2018, for each company in a financial institution's financial group are illustrated below.

	Issuer of Digital Tokens	Portal	Digital asset businesses	Investment in digital tokens (primary market)	Investment in digital assets (secondary market)	Advisory
<b>Financial institutions</b>						
<b>Securities companies</b>						
<b>Asset management companies</b>						
<b>Insurance companies</b>						
<b>Other companies in the financial conglomerate<sup>2</sup></b>						

- The BOT has requested cooperation on not participating. However, for the purpose of developing the financial innovation, efficiency and quality of the service provision, the financial institutions may conduct digital asset-related transactions by participating in the regulatory sandbox program in accordance with the relevant guidelines.
- For the time being, the BOT has requested cooperation on not participating.
- Financial institutions can only solicit or provide advice for investment in digital assets to customers who are institutional, ultra-high net worth, or high-net worth investors.
- Must comply with the regulations prescribed by the SEC Office or the Office of Insurance Commission (OIC), as the case may be, and must obtain prior approval in compliance with regulations under Digital Asset Decree.
- The parent company must obtain an approval from the BOT, on a case-by-case basis.

<sup>2</sup> The other companies in a financial group that are not regulated by specific authorities

## Baker McKenzie Bangkok – FinTech expertise

As one of the first to recognize the convergence of technology and financial services, we are the only law firm with an established global and local FinTech footprint, with dedicated teams of FinTech and digital law experts. We can offer a combination of expertise in the financial services market with digital innovation capabilities.

We have been providing legal services to global, regional, and local clients in financial markets, including both money markets and capital markets, in various areas. Our expertise includes, for example: financial regulations; derivatives; structured finance; wealth management; fund investment; private banking; capital market transactions; anti-money laundering; exchange control; general commercial and corporate legal issues such as the enforceability of contracts; and bankruptcy and business reorganization.

We also provide legal services to various clients involving a broad range of FinTech products.



# Blockchain



## Businesses wishing to integrate blockchain into their services

- Prepare relevant legal documents for the purpose of operating a platform or digitizing the business.
- Identify key legal challenges and ensure compliance with the relevant industry and various technology laws e.g. PDPA, electronic transactions, cybersecurity, etc.



## Infrastructure platform and collaboration projects

- Design and structure the legal relationship between entities involved
- Prepare legal documents governing the relationship of the parties and users of the platform
- Ensure compliance with relevant laws related to the parties and various technology laws e.g. PDPA, electronic transactions, cybersecurity, etc.

# Digital Assets



## Issuer

- Structure digital token offering / tokenization projects with legal compliance
- Prepare project documents (e.g. prospectus / whitepaper) which reflect your commercial needs and comply with laws
- Consult with relevant regulators where appropriate



## ICO Portal

- Obtain approval from the SEC
- Prepare legal documents / agreements for business operations
- Structure and prepare transaction documents in digital token offering / tokenization projects with legal compliance



## Digital asset businesses



Digital asset exchange



Digital asset broker



Digital asset dealer



Digital asset advisor



Digital asset fund manager

- Obtain applicable licenses
- Design and implement legal documents / agreements for business operations that reflect industry practices and regulatory compliance (e.g. T&C, privacy policy, outsourcing agreement, collaboration agreement, etc.)
- Ensure regulatory compliance with on-going businesses applicable to each type of digital asset businesses (e.g. NC maintenance, IT security, AML compliance etc.)
- Maintain and implement policies for investor protection, client asset handling, KYC/CDD procedures

## Key clients in the FinTech sector

- Financial institutions such as commercial banks and insurance companies.
- Intermediaries in the capital markets, such as securities companies, fund management companies, and fund of large corporations.
- Tech companies.
- Telecom companies.
- E-commerce platforms.
- Payment platforms and payment solution providers.
- Fintech companies.
- Startups in digital businesses and FinTech.

### Fintech innovation

Baker McKenzie is on the steering committee for governments, and is the only law firm adviser to the World Economic Forum's Role of Financial Services Project, a multi-year initiative exploring the effect of technology-enabled innovation on financial stability.

We take a multi-disciplinary approach to legal and commercial issues in FinTech, and can offer a combination of expertise in the financial services market, with digital innovation capabilities.

Through the dedicated global and Asia-Pacific Fintech Group, our lawyers can handle cross-border work seamlessly, and are ahead of the curve, both market-wise and regulation-wise, through insight shared across the globe.

## Key legal services in Thailand

We have represented **all types of FinTech players** in the global, regional, and local markets, and have experience in various FinTech products. The majority of our in-depth work began in 2012, when FinTech products began to grow rapidly in Thailand, although we have been involved in the use of technology and innovation in the financial markets since the very early days of the firm. We have assisted the largest and fastest-growing companies in and outside Thailand on matters regarding the use of technology and digitalization in financial markets, including both money and capital markets.

**Across all FinTech areas in more than 140 legal matters in 2019 and 2020**

- E-payment
- Digital banking
- Online consumer finance
- Online money remittance
- Blockchain-based platform
- P2P lending
- Crowdfunding
- Roboadvisor
- Alternative credit adjudication
- Innovative KYC/CDD



- Cryptocurrencies/digital tokens
- JV/M&A in FinTech
- Venture capital investments in FinTech

## Regarding all key FinTech-related laws and regulations

- Financial regulations
- E-payment regulations
- Anti-money laundering
- Data protection
- E-transactions
- Exchange control
- IP protection
- Cybersecurity
- Consumer protection

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