A Complete Guide to the Regulations on Cryptocurrency and Digital Token Offering in Thailand

2022 Edition

(The law as of 15 July 2022)
In 2021 and 2022, the digital assets industry in Thailand grew significantly as more big players in the traditional financial industry and start-up players entered the digital assets market. Price volatility and regulatory complexities have not slowed the rise of crypto activities.

Regulations in the digital assets landscape have tightened to ensure investor protection and monetary system stability, and to mitigate the risks posed by cryptocurrency and digital tokens.

From late 2021 through to mid-2022, the Office of the Securities and Exchange Commission (SEC) held public hearings and issued additional guidelines and regulations. The licensing procedure is stringent, as the SEC intends to provide strong risk governance and a safe environment for investors. The SEC has also strictly enforced the rules by prosecuting and fining non-compliant business operators.

To keep up with the dynamic and evolving regulatory developments, we have revised this publication to provide an update on regulations pertaining to digital assets in Thailand.

Non-reliance and exclusion: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites.
Table of contents

Part I. Applicable laws 5

Part II. Digital asset law 6

1. How can we differentiate between cryptocurrencies and digital tokens, and how are they regulated? 7

2. Overview of the regulatory regime on the offering of digital tokens and operation of a digital asset business 8

2.1. Offering of digital tokens to the public 9

A. Digital token offering 9

B. Proposed rules on ready-to-use utility tokens 9

C. Exempt offering: limited offering 10

D. Real estate digital token offering 11

E. Relevant parties 12

2.2. Operation of a digital asset business 13

A. Regulated activities 13

- Digital asset exchange 13

- Digital asset broker 13

- Digital asset dealer 13

- Digital asset fund manager 13

- Digital asset advisor 13

- Digital asset custodial wallet provider 14

B. Exempt activities 14

3. Guideline for various types of market participants 15

3.1 Guideline for entities planning to issue digital tokens 15

A. Issuer 15

B. Digital token 16

C. Registration statement and prospectus 16

D. Offering process 16

E. Timeline 17

F. Offering period 17

G. Fees 17

3.2 Guideline for entities planning to operate as an ICO portal 18

A. Portal 18

B. Timeline 18

C. Fees 19
3.3 Guideline for investors

3.4 Guideline for entities planning to operate digital asset businesses
   A. Digital asset exchange, broker, dealer
   B. Digital asset advisor and fund manager
   C. Timeline
   D. Ongoing requirements for digital asset businesses
      - Custody of customers’ assets
      - Operation of other businesses
      - Outsourcing
      - Listing rules
      - Restriction on payment by digital assets
      - Advertisements
      - IT standards

3.5 Guideline for entities planning to issue NFTs or operate an NFT marketplace

Part III. Anti-money laundering regulations
   1. On-boarding process
   2. Ongoing compliance requirements

Part IV. Baker McKenzie Bangkok – FinTech and digital asset expertise
Part I. Applicable laws

The starting point for understanding 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 (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 and other existing laws, including the Securities and Exchange Act, the Payment Systems Act, and the Derivatives Act.

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.
The following is an overview of how digital assets are regulated in Thailand.

### Thailand's regulatory regime

<table>
<thead>
<tr>
<th>Emergency Decree on Digital Asset Businesses, B.E. 2561</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Offering of digital tokens</strong></td>
</tr>
<tr>
<td>- Digital token</td>
</tr>
<tr>
<td>- Cryptocurrency</td>
</tr>
<tr>
<td>- Issuer</td>
</tr>
<tr>
<td>- Portal</td>
</tr>
<tr>
<td><strong>Digital asset businesses</strong></td>
</tr>
<tr>
<td>- Digital asset exchange</td>
</tr>
<tr>
<td>- Digital asset broker</td>
</tr>
<tr>
<td>- Digital asset dealer</td>
</tr>
<tr>
<td>- Digital asset fund manager</td>
</tr>
<tr>
<td>- Digital asset custodial wallet provider</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Emergency Decree on Amendment of the Revenue Code (No. 19), B.E. 2561</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>New types of income</strong></td>
</tr>
<tr>
<td>- Share of the profit or any benefit derived from holding or having possession of digital tokens.</td>
</tr>
<tr>
<td>- Capital gains from the transfer of a cryptocurrency or digital token.</td>
</tr>
<tr>
<td><strong>Withholding tax obligations</strong></td>
</tr>
<tr>
<td>- Share of the profit or any benefit derived from holding or having possession of digital tokens.</td>
</tr>
<tr>
<td>- Capital gains from the transfer of a cryptocurrency or digital token.</td>
</tr>
</tbody>
</table>
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**.

<table>
<thead>
<tr>
<th>Cryptocurrency</th>
<th>Digital token</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic data unit.</td>
<td>Electronic data unit.</td>
</tr>
<tr>
<td>Created on an electronic system or network.</td>
<td>Created on an electronic system or network.</td>
</tr>
<tr>
<td>Being a medium for exchanging goods, services, rights, or digital assets.</td>
<td>For determining:</td>
</tr>
<tr>
<td>Other electronic data unit as designated by the SEC.</td>
<td>1. The right of an investor to invest in any project or business (i.e. investment token).</td>
</tr>
<tr>
<td></td>
<td>2. The right to receive specific goods, services, or other right as agreed (i.e., utility token)</td>
</tr>
<tr>
<td></td>
<td>Other electronic data unit as designated by the SEC</td>
</tr>
</tbody>
</table>

However, a cryptocurrency can be deemed a digital token 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.

The key difference between these two types of asset 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. 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.
2 Overview of the regulatory regime on the offering of digital tokens and operation of a digital asset business

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

2.1 Offering of digital tokens to the public
2.2 Operation of digital asset businesses
2.1 Offering of digital tokens to the public

A. Digital token offering

To offer regulated digital tokens (e.g. investment tokens, utility tokens for which the underlying products or services are not ready-to-use as of the date of offering) to the public, the issuer must: (i) have the specified qualifications; (ii) obtain approval from the SEC Office; and (iii) 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. Proposed rules on ready-to-use utility tokens

In May 2022, the SEC held a public hearing regarding the intention to strengthen the rules on ready-to-use utility tokens. The SEC proposed that an issuer of ready-to-use utility tokens must submit a filing via the ICO portal and obtain approval from the SEC (fast or normal track), unless the token will not be listed on the exchange or be qualified as a simple ready-to-use utility token.

Simple ready-to-use tokens must have the following characteristics:

- Tokens that specify clear rights to be redeemed for existing products, and the rights to redeem have an expiry date.
- Products and services can be redeemed for a fixed amount of tokens and do not vary according to the price of the tokens.
- The offering price is reasonable when compared to the offered product or service.
- Rights of the tokens cannot be re-used after the holder redeems the tokens for the product or service.
- Tokens must not be used as a means of payment.

The issuer must set fair conditions for allocating tokens to affiliates. For example, the token allocation for the issuer and affiliates should not exceed 50 percent. The issuer and affiliates are...
not allowed to sell their tokens during the silent period (one year after the offering). The issuer and affiliates are permitted to sell a maximum of 25 percent of the locked-up tokens after six months.

The proposed rules also tighten the listing and trading of ready-to-use utility tokens on local digital asset exchanges (secondary market) by setting out the following principles:

- Improve the listing rule to be in line with the primary market restrictions.
- Have an agreement between the exchange and issuer regarding the information disclosure.
- Set 25 percent as the free float percentage, and disclose the percentages held by affiliated persons.
- Consider liquidity and rating from reliable websites when listing offshore tokens.
- Improve the trading rule by specifying the criteria for a trading halt or caution.
- Provide an effective market surveillance system for preventing unfair trading and price manipulation.

As of 15 July 2022, the proposed rules for ready-to-use utility tokens were still subject to the result of the public hearing, and not yet finalized. As the new rules may affect licensed business operators and token issuers' business plans, in-depth analysis will be necessary when the rules are final.

C. Exempt offering: limited offering

Offering of regulated digital tokens that contain 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 the registration statement and draft prospectus.

- The offering is made to any one of these types of investor: institutional, and ultra-high net worth.
- 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 regulations prescribed by the SEC (including offering through an approved portal); and (ii) create and disclose a report on the sale of digital tokens and the information regarding the holding of digital tokens by each type of investor.
D. Real estate digital token offering

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

- **Real estate**
  The construction of the underlying real estate must be complete 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 token holders in general.

- **Investment value**
  The amount or value of the investment in real estate must not be less than 80 percent of the project's amount or value, or the aggregate value of the real estate to be invested in 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 fulfil specific requirements if the real estate to be invested in is located overseas.

- **Legal formalities**
  The contract to acquire the real estate must not contain any agreement or obligation that may prevent the sale of the real estate at a fair price. A draft trust deed must be prepared and must fulfil the requirements in the applicable 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 token**
  If there are different types of digital token, 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 regarding 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 effects on holders of digital tokens.

- **Establishment of a trust**

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

  (i) Trust for the holding of ownership or right of possession over real estate.
  
  (ii) Trust for investment in leasehold rights in real estate.
  
  (iii) Trust that 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 percent of the total number of issued shares, representing at least 75 percent 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, and which must comply with the trust deed.

- **Trustee**

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

---

**E. Relevant parties**

- **Issuer**

  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 an SEC-approved portal. For the digital token offerings which have been approved, please see: https://www.sec.or.th/EN/Pages/Shortcut/DigitalAsset.aspx.

- **Portal**

  Once a portal has received SEC approval, it is obligated by law to conduct due diligence and a screening process. However, inspection of 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 public policy, or on any other reasonable grounds.

As of 15 July 2022, the SEC had approved seven 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.)
2.2 Operation of a digital asset business

A. Regulated activities

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 enter into an agreement or to match orders in the normal course of business. However, this does not include systems or networks in the manner specified by the SEC Office.

Digital asset broker
This means a person who 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 brokers or agents operating in the manner specified in the SEC notifications.

Digital asset dealer
This means a person who 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 dealers operating in the manner specified in the SEC notifications.

Digital asset fund manager
This means a person who manages or holds himself out 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 specified in the 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 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 specified in the notifications of the SEC

Digital asset custodial wallet provider

After a few rounds of hearings, in July 2022, the Ministry of Finance accepted and issued the principle and regulations regarding licensing requirements for operating a digital asset custodial wallet service. The sub-regulations are now being drafted and finalized by the SEC. A digital asset custodial wallet provider is defined as a person who provides services or holds himself out to the public as available to provide one or other of the services described below, in the normal course of business, and in consideration for a fee or other remuneration.

(i) Storing or keeping digital assets.

(ii) Managing customers' cryptographic keys or any material that must be kept secret, for full or partial authorization of digital assets transfer or transaction approval.

A license applicant could be a bank, securities company, other financial institution, or a newly established company. However, the applicant must ensure that it has all of the qualifications and meets all the requirements that will be specified in the regulations to be prescribed by 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.

B. Exempt activities

Generally, all digital asset business operators are subject to licensing and regulatory requirements. However, the following scenarios are exempt.

- Business operations by the 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 applicable laws such as the payment system law and currency law, under the supervision of the BOT and the MOF.

3 Guideline for various types of market participants

3.1 Guideline for 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 offering 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, done by an auditor recognized by the SEC Office, or must meet the qualifications prescribed by the SEC Office.
- The 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 mechanism used in place of a smart contract 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 applicable regulations.
- The registration statement and draft prospectus must include important information as prescribed in the regulations; 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.
  - 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.
  - Regarding the issuer, the offering limit for retail investors in each round of offering is the higher of ≤ four times the shareholders' equity of the issuer, and ≤ 70 percent of the total offering amount per round.
  - The issuer may receive THB or "approved cryptocurrencies by the SEC Office" (i.e. BTC, ETH, XRP, and, XLM) for payment for digital tokens.
E. Timeline

- The issuer creates a whitepaper, prepares the structure of tokens, and submits them to an approved portal.
- The issuer submits the draft prospectus to the SEC office, with solid business plan, details of the rights of token holders and other required information.
- The SEC inspects and ascertains the information and reports any problematic issues for applicant to clarify the issues within a specified period.
- The applicant clarifies the problematic issues within a specified period as prescribed by the SEC.
- This process must be completed within 60 days from the date that the SEC received draft prospectus from the applicant.
- The SEC reports the result within 30 days from the date of receiving the written clarification on the problematic issues from the applicant.

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 percent of the total value of digital tokens offered for sale.
3.2 Guideline for entities planning to operate as an ICO 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 in traditional IPO deals, and funding portals in crowdfunding deals.

Key responsibilities regarding the offering project:
- The portal must conduct 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.
- The portal must provide knowledge and advice to the issuer about its duties and responsibilities toward investors, including the applicable 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 and CDD processes, and transaction reporting.

B. Timeline

- The SEC will consider granting approval for a portal within 90 days from the date the SEC Office receives the application and all of the 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

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

3.3 Guideline for 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.

---

1 If the applicant's business is in its first year of operation, the fee is to be paid to the SEC before the date the business commences.
### 3.4 Guideline for entities planning to operate digital asset businesses

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

<table>
<thead>
<tr>
<th>Required license under the Digital Asset Decree</th>
<th>License from the MOF upon the recommendation of the SEC.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Key qualifications for license application</strong></td>
<td>Company established in Thailand. A digital asset exchange must not be a digital asset dealer, and vice versa.</td>
</tr>
</tbody>
</table>
| **Required paid-up registered capital**          | - For an exchange \(\geq\) THB 50 million.  
    - For a non-asset keeping exchange \(\geq\) THB 10 million.  
    - For an asset-keeping exchange that has no ability to access or transfer customers' assets without their approval on a one-time basis \(\geq\) THB 10 million.  
    - For a broker \(\geq\) THB 25 million.  
    - For a non-asset keeping broker \(\geq\) THB 1 million.  
    - For an asset-keeping broker that has no ability to access or transfer customers' assets without their approval on a one-time basis \(\geq\) THB 5 million.  |
| **Net capital (NC) maintenance**                 | Exchanges, brokers, and dealers must maintain net capital as prescribed in the applicable regulations. |
| **Consideration under AML and CTF laws**        | The operator will be considered a "financial institution" under AML and CTF laws and must comply with several obligations, including KYC and CDD and transaction reporting. |
| **Fees**                                         | - License fee: THB 2.5 million for operating a cryptocurrencies exchange; THB 2.5 million for operating a digital tokens exchange.  
    - Annual fee: 0.002 percent of the total trading value; the annual fee is in the range of THB 0.5 million – THB 20 million.  
    - License fee: THB 1.25 million for operating a cryptocurrencies brokerage; THB 1.25 million for operating a digital tokens brokerage.  
    - Annual fee: 0.001 percent of the total trading value; the annual fee is in the range of THB 0.25 million – THB 10 million.  
    - License fee: THB 1 million for a cryptocurrencies dealer; THB 1 million for a digital tokens dealer.  
    - Annual fee: 1 percent of the profit (capital gain) from the trading; the annual fee is charged within the range of THB 0.1 million – THB 5 million.  |

License application fee: THB 30,000 per license.
B. Digital asset advisor and fund manager

<table>
<thead>
<tr>
<th>Required license under the Digital Asset Decree</th>
<th>Digital asset fund manager</th>
<th>Digital asset advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>License from the MOF upon the recommendation of the SEC.</td>
<td>License from the MOF upon the recommendation of the SEC.</td>
<td>License from the MOF upon the recommendation of the SEC.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key qualifications for license application</th>
<th>Digital asset fund manager</th>
<th>Digital asset advisor</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Required paid-up registered capital</th>
<th>Digital asset fund manager</th>
<th>Digital asset advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ For asset-keeping managers, or managers who provide services to non-institutional customers ≥ THB 25 million.</td>
<td>▪ For an advisor ≥ THB 1 million.</td>
<td>▪ For an advisor ≥ THB 1 million.</td>
</tr>
<tr>
<td>▪ For non-asset keeping managers who provide services only to institutional customers ≥ THB 10 million.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net capital (NC) maintenance</th>
<th>Digital asset fund manager</th>
<th>Digital asset advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Fund manager and advisor must maintain net capital as prescribed by the applicable regulations.</td>
<td>▪ Net capital maintenance</td>
<td>▪ Net capital maintenance</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Consideration under AML and CTF laws</th>
<th>Digital asset fund manager</th>
<th>Digital asset advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>The operator will be considered as a &quot;financial institution&quot; under the AML and CTF laws and must comply with several obligations, including KYC and CDD and transaction reporting.</td>
<td>The operator will be considered as a &quot;financial institution&quot; under the AML and CTF laws and must comply with several obligations, including KYC and CDD and transaction reporting.</td>
<td>The operator will be considered as a &quot;financial institution&quot; under the AML and CTF laws and must comply with several obligations, including KYC and CDD and transaction reporting.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fees</th>
<th>Digital asset fund manager</th>
<th>Digital asset advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ License fee: THB 0.5 million for operating as a cryptocurrencies fund manager; THB 0.5 million for operating as a digital tokens fund manager.</td>
<td>▪ License fee: THB 15,000 for operating a cryptocurrencies advisor; THB 15,000 for operating as a digital tokens adviser.</td>
<td>▪ License fee: THB 15,000 for operating a cryptocurrencies advisor; THB 15,000 for operating as a digital tokens adviser.</td>
</tr>
<tr>
<td>▪ Annual fee: 0.001 percent of the total value under management each calendar year; the annual fee is in the range of THB 0.25 million – THB 10 million.</td>
<td>▪ Annual fee: THB 25,000.</td>
<td>▪ Annual fee: THB 25,000.</td>
</tr>
</tbody>
</table>

License application fee: THB 30,000 per license.

The SEC plans to hold a public hearing this year regarding authorized directors and c-suite management qualifications. Under the new proposed conditions, authorized directors and c-suite managers must have at least three years of direct experience in the digital assets business.
C. Timeline

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

D. Ongoing requirements for digital asset businesses

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

- **Custody of customers’ assets**

  Asset-keeping business operators must keep no less than 90 percent of the total customers’ assets in a cold wallet. An operator may keep the assets in its 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 more, and the operator keeps the assets for more than five consecutive days, the assets must be kept in a custodian service provider’s wallet.

  The SEC has also amended and strengthened the rules on custody of assets, which include the following key contents:

  - The use of customers’ assets, fiat money, or digital assets for the benefit of another client or any other person is prohibited.
  - Seeking benefits from customers’ digital assets is prohibited, including in the form of deposit and lending to other persons.
  - The digital asset business operator must deposit customers’ fiat money with commercial banks. The digital asset business operator and the customers may agree on an interest rate not exceeding the actual rate the business operator receives from the commercial banks.
Customers’ assets must be reconciled every business day to ensure accurate and updated records of customers’ assets.

- **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 with the digital asset business, or pose a risk to the customers’ assets. If the new business meets the mentioned criteria, the business operator could carry on the new business without the SEC’s approval; otherwise, approval from the SEC will be granted on a case-by-case basis.

- **Outsourcing**

  A business operator wishing to outsource key aspects of its businesses must be able to demonstrate that it has implemented appropriate measures as prescribed by the applicable regulations, and the outsourcing agreement must have the substance as prescribed by the SEC.

- **Listing rules**

  A licensed digital asset exchange is restricted from selecting and listing a digital token that has the following characteristics:

  - Meme token.
  - Fan token.
  - Non-fungible token (NFT).
  - Digital token issued by digital asset exchanges themselves or related persons, and used in blockchain transactions.

  A licensed digital asset business operator is also prohibited from providing services regarding privacy coins.

- **Restriction on payment by digital assets**

  In March 2022, the SEC issued a notification that prohibits licensed digital asset business operators from acting or providing any service in a manner that will promote, support, or encourage the use of digital assets as a means of payment for goods and services. The prohibition includes advertising; providing any wallet service, system, or tool that would facilitate the acceptance of digital assets as payments, and to transfer digital assets from a customer’s account to another for the purpose of making payment.

- **Advertisements**

  In May 2022, the SEC committee approved a key principle regarding enhancing advertising standards, as proposed in the SEC public hearing in March 2022. When the draft principles are promulgated, digital asset business operators will be prohibited from advertising specific cryptocurrency in public spaces. Digital asset business operators may only advertise their services (rather than specific cryptocurrency), and only through their own respective official advertising channels, in order to prevent impulsive buying. Digital asset business operators are also obliged to seek the SEC’s approval before running each advertisement, and to report the
advertisement costs to the SEC. Furthermore, the service of an introducing broker agent for digital asset operators regarding cryptocurrency (but not digital tokens) will be suspended.

- **IT standards**
  
  To ensure business operators' IT security, the SEC held a public hearing in May 2022 on proposed amendments to the rules on the establishment of information technology systems. This is summarized below:

  - Establishing IT-related risk assessment criteria to define the entity's risk level, and to specify standards of IT security controls and oversight that are suitable to apply to licensed entities.
  - Separating clear roles and responsibilities for departments and responsible persons, to ensure the "three lines of defense" principle.
  - Revising the requirements and guidelines to be in line with international standards and financial IT regulations.

### 3.5 Guideline for entities planning to issue NFTs or operate an NFT marketplace

A non-fungible token (NFT) is a form of a digital token with unique characteristics that cannot be replaced by the same type of electronic unit and amount.

Generally, the issuance and trading of NFT is not regulated by the SEC, unless the NFT falls under the scope of digital assets as specified by the regulations. That is to say:

(i) Is not a medium of exchange for acquiring goods, services, or any rights or exchange between digital assets.

(ii) Does not specify the right of a person to participate in an investment in any project or business.

(iii) Does not specify the right of a person to acquire specific goods, specific services, or any other right.

If the characteristics of the NFT deem it to be a digital asset – meaning it has any of the characteristics described in items (i), (ii), or (iii) above – (1) issuance would be subject to offering requirements; and (2) the platform allowing the sale and purchase could be considered a digital asset business, depending on the details of the platform. For this reason, a platform that acts as a marketplace could be subject to requirements under the digital asset law, such as the requirement to obtain a digital asset business license.

If the particular NFT is merely storage of the underlying digital file (such as an image, audio file, or video file) using blockchain technology, without providing any other additional right to the holder, and if it is not possible to separate the token from its underlying digital file, that NFT will not be considered as a digital asset under the SEC regulations and the Thai digital asset law.
It should also be emphasized that digital asset exchanges in Thailand are not allowed to list NFTs to be traded on their platforms.
A licensed digital asset business operator and approved portal will be deemed to be a financial institution under the Anti-Money Laundering Act, B.E. 2542 (1999) according to the Digital Asset Decree, which creates obligations for the role of "reporting entities" (REs) under the AML laws, as summarized below.

Know your customer (KYC) and customer due diligence (CDD)

1. On-boarding process

REs must obtain specified customer information, verify evidence, and identify customers. The fields of information required, and measures of identification and verification, differ, depending on the product or service's money-laundering risk level. REs must conduct risk assessment using specific factors provided in the Anti-Money Laundering Office notifications.

Measures for medium to high-risk products will require additional information that is not available from an ID card or passport, and will also require intensive measures to verify customer evidence. There are also requirements for customer identification measures, to prove that the person who executes a transaction is the same person that appears in the evidence. Methods of identification depend on the delivery channels, as summarized below.

<table>
<thead>
<tr>
<th>Identification and Verification - Thai Individual Customers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>F2F</strong> (Face to Face)</td>
</tr>
<tr>
<td>Data and Evidence Verification</td>
</tr>
<tr>
<td>The reporting entity must do one of the following</td>
</tr>
<tr>
<td>1. Dip chip + Online DOPA</td>
</tr>
<tr>
<td>2. Dip chip + Checking data with an ID card</td>
</tr>
<tr>
<td>3. Verifying data through government databases</td>
</tr>
<tr>
<td>4. The staff verifying evidence and approving the data</td>
</tr>
<tr>
<td>Customer Verification</td>
</tr>
<tr>
<td>Verified by staff</td>
</tr>
</tbody>
</table>

| **NON F2F** (Non Face to Face)                               |
| Data and Evidence Verification                               |
| The reporting entity must do one of the following             |
| 1. Dip chip + Online DOPA                                    |
| 2. Dip chip + Checking data with an ID card                   |
| 3. Verifying data through government databases               |
| 4. The staff verifying evidence and approving the data       |
| Customer Verification                                        |
| • Selfie                                                     |
| • Facial comparison (Staff/Biometrics)                       |

** Business operators may use the methods specified by AMLO or other methods with the same level of reliability (e.g. NDID)
2. Ongoing compliance requirements

The Ministerial Regulation on Customer Due Diligence, B.E. 2563 (2020) require REs to have several AML measures, including, but not limited to: maintenance of AML internal policy and guidelines; customer risk assessment; transaction monitoring; a sanctions list database; ultimate beneficial owner identification; transaction reporting; and specific internal controls.
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 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

- Prepare necessary legal documents for the purpose of operating a platform or digitizing the business.
- Identify key legal challenges and ensure compliance with the industry and technology laws, including the PDPA, electronic transactions, and cybersecurity.
- Design and structure the legal relationship between entities involved.
- Prepare legal documents governing the relationship between the parties and users of the platform.
- Ensure compliance with applicable laws regarding the parties and technology laws, including the PDPA, electronic transactions, and cybersecurity.

Digital assets

- Structure digital token offering and tokenization projects for legal compliance
- Prepare project documents including prospectus and white paper) reflecting
- Obtain approval from the SEC.
- Prepare legal documents and agreements for business operations.
commercial needs and compliance with laws.
- Consult with regulators when appropriate.

- Structure and prepare transaction documents for digital token offering and tokenization projects, for legal compliance.

Digital asset businesses

- Digital asset exchange
- Digital asset broker
- Digital asset dealer
- Digital asset advisor
- Digital asset fund manager
- Digital asset custodial wallet provider

- Obtain applicable licenses.
- Design and implement legal documents and agreements for business operations that reflect industry practices and regulatory compliance, including T&C, privacy policy, outsourcing agreements, and collaboration agreements.
- Ensure regulatory compliance applicable to each type of digital asset business, covering NC maintenance, IT security, and AML compliance.
- Maintain and implement policies for investor protection, client asset handling, and KYC and CDD procedures.

Key clients in the FinTech sector

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

FinTech innovation

Baker McKenzie is on the steering committees 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 team 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.

We have represented all types of FinTech players in 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 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 platforms.
- P2P lending.
- Crowdfunding.
- Robo-advisor.
- Alternative credit adjudication.
- Innovative KYC and CDD.
- Cryptocurrencies and digital tokens.
- JVs and M&As 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.

©2022 Baker & McKenzie Ltd.

This guide has been prepared for the general information of clients and professional associates of Baker McKenzie. It is not legal advice, and should not be regarded as a substitute for legal advice. To the fullest extent allowed by law, Baker McKenzie excludes all liability (whether arising in contract, negligence, or otherwise) regarding all and each part of this communication, including, without limitation, any errors or omissions. No client or other reader should act or refrain from acting on the basis of any matter contained in this document, without first seeking the appropriate legal or other professional advice on the particular facts and circumstances.