



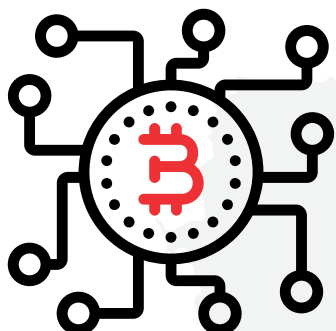
**Baker
McKenzie.**

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

2023 Edition

(The law as of 29 August 2023)

Digital assets in Thailand



In 2022 and 2023, following the collapse of the key global players in the crypto industry, regulators around the world closely scrutinized crypto activities and tightened the regulations for digital asset businesses. This tightening primarily concerns the protection and segregation of customers' assets, which has become standard practice since the crypto crash.

Over the past year, we have witnessed a series of enforcement actions and attempts by offshore regulators to classify various types of digital asset products and determine whether these products should be classified as securities.

Building upon the aforementioned trends in the digital asset industry, the Office of the Securities and Exchange Commission (SEC) issued new regulations and held public hearings. These initiatives aim to enhance investor protection and strike a balance between supervising and fostering the development of the crypto industry.

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

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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.

Part II. 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



Offering of digital tokens

- Digital token
- Cryptocurrency
- Issuer
- Portal



Digital asset businesses

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



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



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.



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. The right of an investor to invest in any project or business (i.e., investment token).
 2. The 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 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 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. 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.

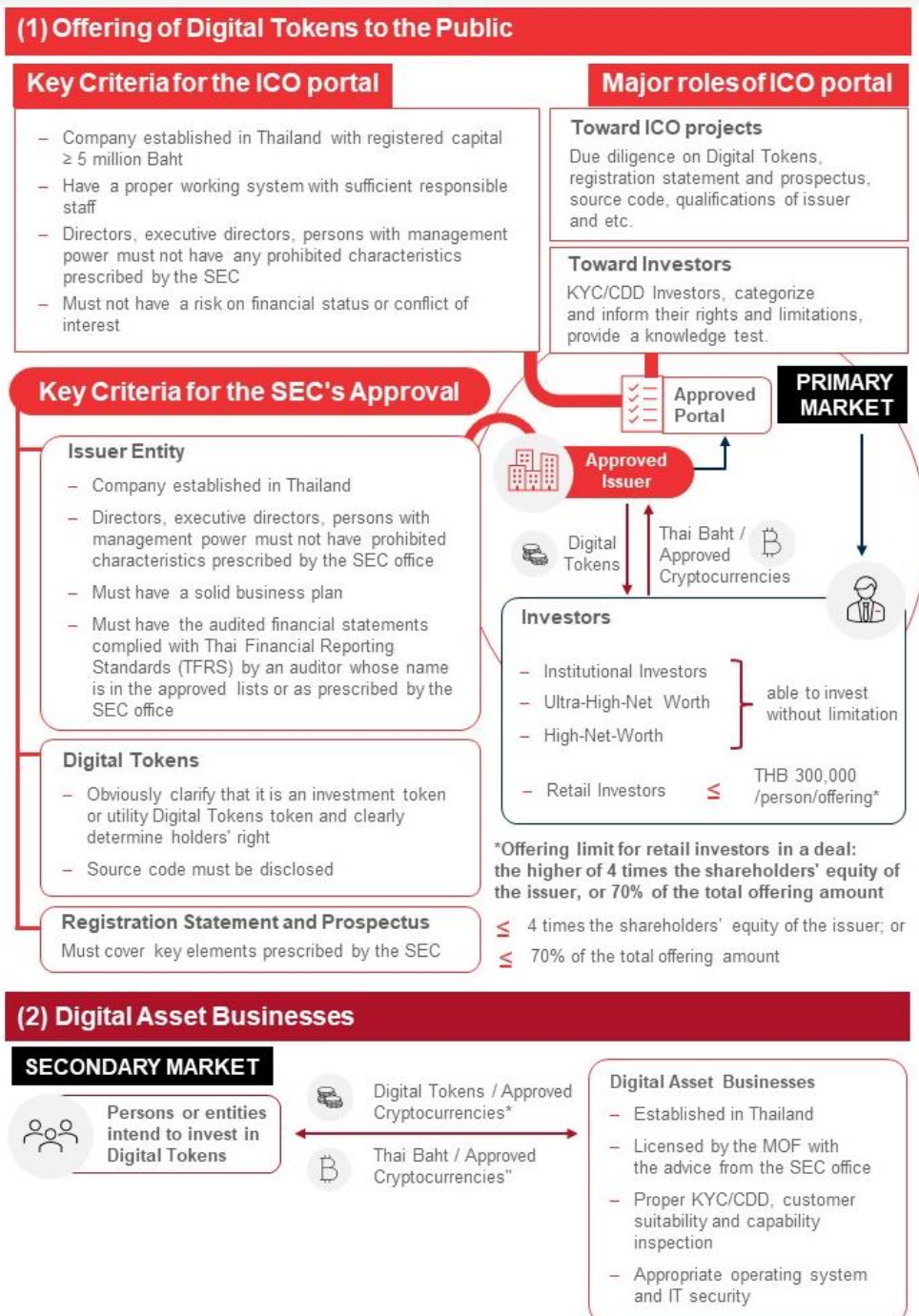
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Overview of the regulatory regime on the offering of digital tokens and operation of a digital asset business

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

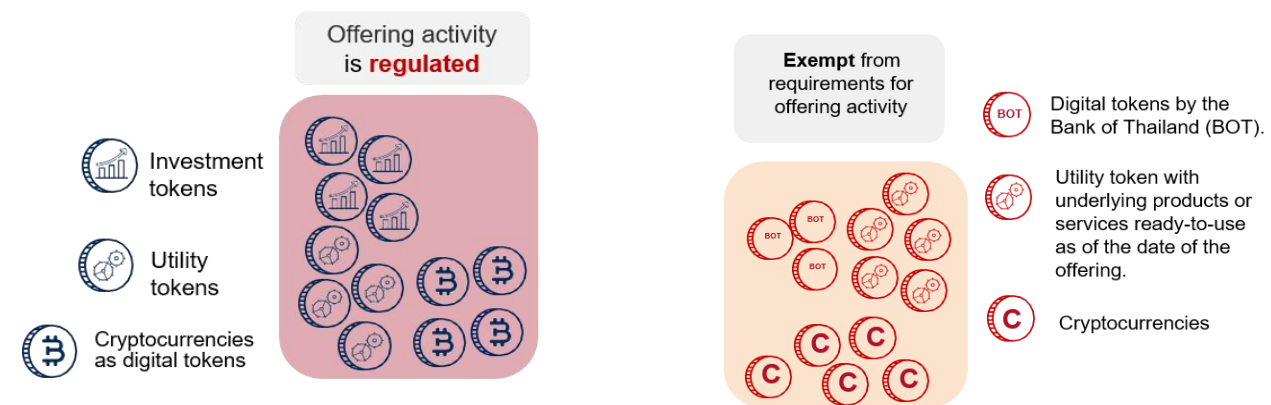
- 2.1 Offering of digital tokens to the public
- 2.2 Operation of digital asset businesses

Thailand's regulatory regime on the offering of digital tokens to the public



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.

To promote investment tokens, the Thai Revenue Department issued the Royal Decree in August 2023 concerning an exemption related to the improvement of taxation for investment tokens. In summary, both the corporate income tax and value added tax (VAT) exemptions are available for the offering of investment tokens in the primary market whereas the transfer of investment tokens in the secondary market will also be exempt from VAT. The rationale behind this is that investment tokens, similar to securities, may be categorized as equity or debt, and consequently, the tax obligations for the offering and sale of investment tokens, both in the primary and secondary markets, should be similar to those applicable to securities.

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

In January 2023, the SEC held a public hearing regarding the draft regulations of ready-to-use utility tokens. The SEC proposed that an issuer of ready-to-use utility tokens should be separated into two groups and regulated as follows:

Group 1: Ready-to-use utility tokens issued for consumption purposes or as a digital representation of a certificate

Primary market	Exempt from offering activity requirements.
Secondary market	The business operators are exempt from digital asset licensing requirements for operating or providing services (e.g., a marketplace) related to this type of token. Licensed digital asset exchanges, brokers and dealers are not permitted to list or provide services related to this type of token.

Group 2: Ready-to-use utility tokens not specified in Group 1 (e.g., native/governance tokens, DeFi/CeFi/GameFi tokens, and exchange tokens)

Primary market	<p>If the token will be listed on a licensed digital asset exchange, it is subject to offering activity requirements (For further details please see Part 3.1).</p> <p>If the token will not be listed on a licensed digital asset exchange, it is exempt from offering activity requirements.</p>
Secondary market	<p>The business operators are subject to digital asset licensing requirements for operating or providing services related to this type of token.</p> <p>Licensed digital asset exchanges are permitted to list this type of token if the token does not have prohibited characteristics and is in line with the listing rule.</p>

In addition, there are other requirements, such as not being a "Means of Payment: MOP" according to the BOT's guidelines and restrictions regarding a staking program.

These proposed rules for ready-to-use utility tokens are still subject to the result of the public hearing and have not been finalized. These new rules could potentially impact the business plans of licensed business operators and token issuers, and an in-depth analysis will be necessary once the rules are finalized.



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 investors: 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 in which 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 tokens**

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.

Based on the SEC's public hearing, there could be some additional changes and revisions to the regulations regarding the real-estate backed tokens.



E. Proposed rules on debt-like and infra-backed tokens

In June and August 2023, the SEC proposed to classify the new type of investment tokens that are debt-like and infra-backed tokens, and subsequently issued the draft regulations to regulate these tokens. The SEC views that these tokens are structured similarly to existing securities under the securities law. In this regard, the SEC set out the new offering regulations for debt-like and infra-backed tokens to be comparable with debt securities or infrastructure trusts, as the case may be. For example, the specific requirements relating to the issuance of infra-backed tokens may include, but are not limited to, asset due diligence and appraisals, trustee roles and responsibilities, asset management of the issuer, and limitations of the greenfield project and underlying assets.

These proposed rules for debt-like and infra-backed tokens are still subject to the result of the public hearing and have not been finalized.



F. 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/TH/Pages/Shortcut/DigitalAsset.aspx#issuer>

- **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 29 August 2023, 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://market.sec.or.th/LicenseCheck/views/DABusiness?ico/en>.)

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

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. 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.
-

The services under paragraph one shall not include services which are a part of specific services prescribed by the SEC.

Furthermore, in June 2023, the SEC proposed additional exemptions to reduce the costs and burdens for the business operators. While this proposed rule is not yet effective, it reflects the SEC's intention to promote the digital asset industry and will relieve some of the burden from business operators, once effective.

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 in the regulations to be prescribed by the SEC.

As of August 2023, the SEC has not yet granted any digital asset custodial wallet provider license to anyone. To promote the custodial wallet business in Thailand, the SEC held another public hearing on 23 August 2023 to propose some relaxation in the regulations.

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://market.sec.or.th/LicenseCheck/views/DABusiness?exchange/en>



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.

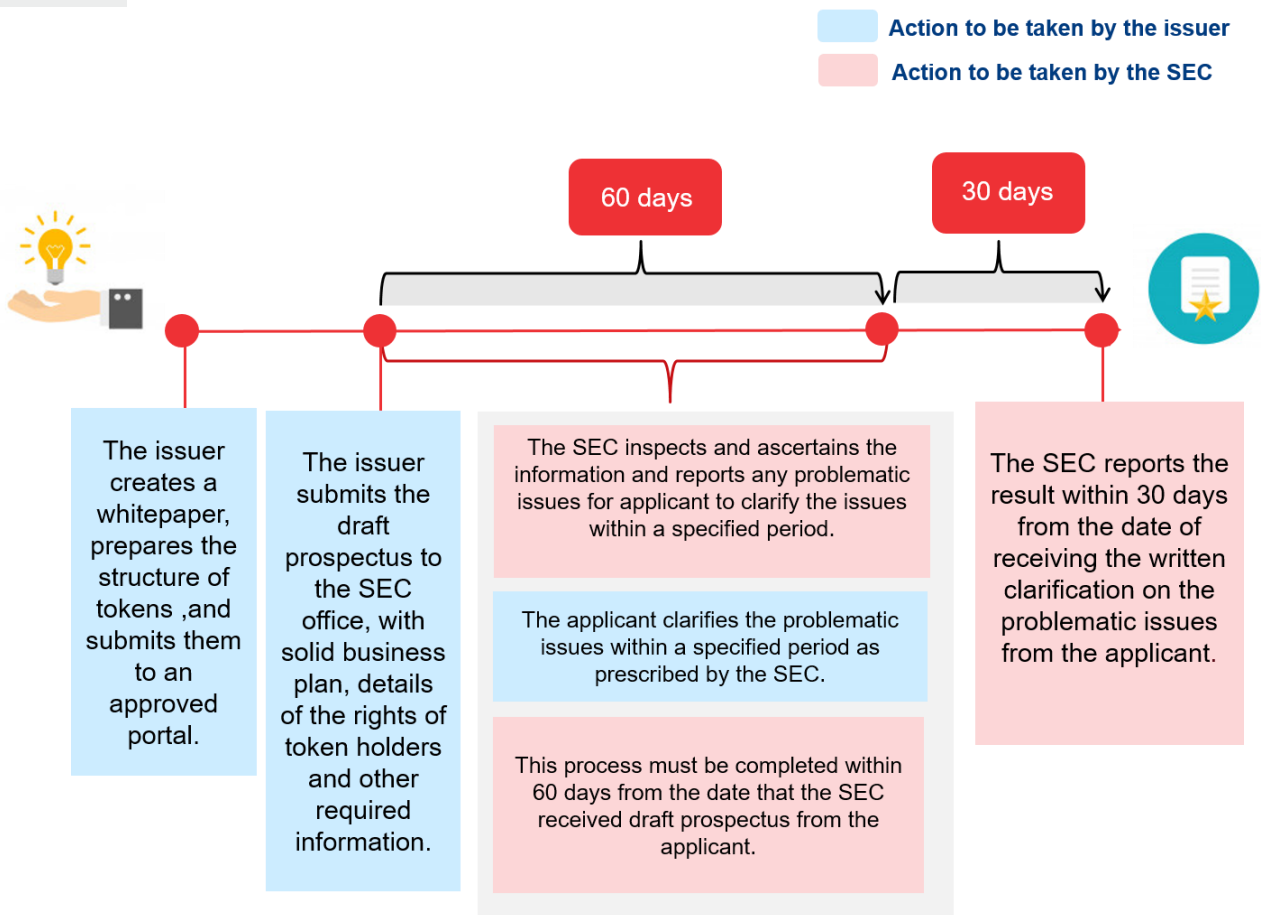


D. Offering process

- An offering may only be done through an approved portal and to the following investors:
 - Institutional, ultra-high-net-worth, high-net-worth 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. Based on the SEC's recent public hearing no. 41/2566 (23 August 2023), it intends to adjust the investment limit of retail investors by removing the investment limit in the case of real-estate backed and infra-backed tokens, from the original limit of THB 300,000 per person per offering.
 - Regarding 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 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



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.
- A portal shall not provide service to issuers if they are related in a way that could impact on their duty performance and independence.
- 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. Fees¹

- 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, high-net-worth 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

	Digital asset exchange	Digital asset broker	Digital asset dealer
Required license under the Digital Asset Decree	License from the MOF upon the recommendation of the SEC.		
Key qualifications for license application	Company established in Thailand. A digital asset exchange must not be a digital asset dealer, and vice versa.		
Required paid-up registered capital	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> For a dealer \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	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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 .			

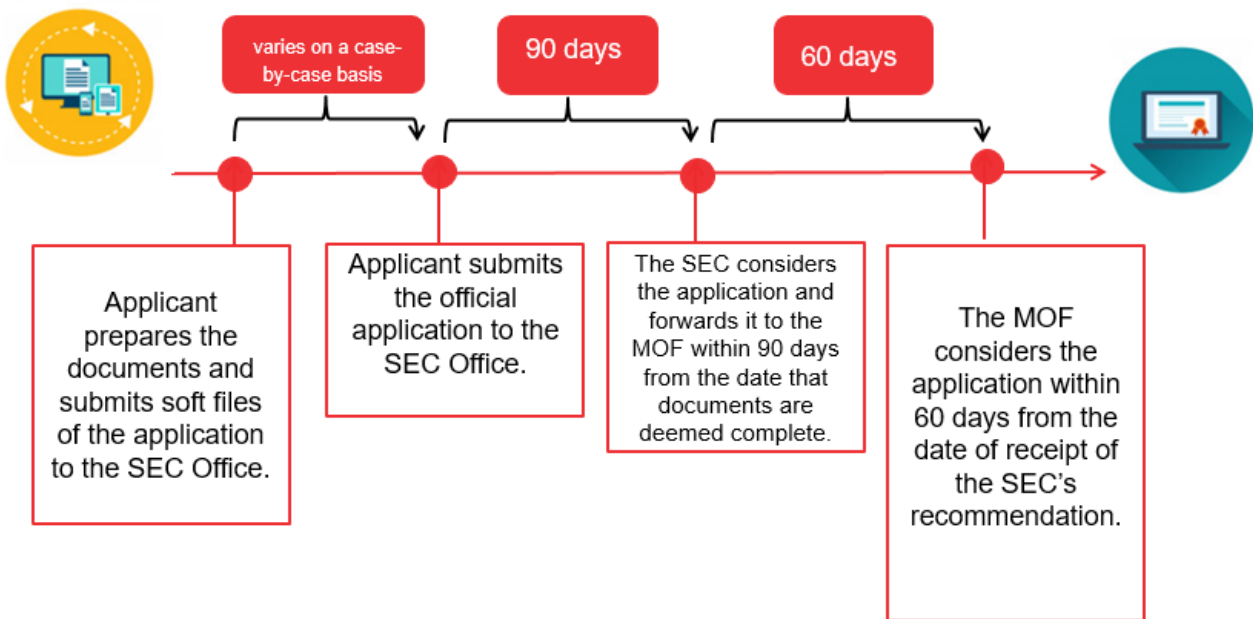
B. Digital asset advisor, fund manager, and custodial wallet provider

	Digital asset fund manager	Digital asset advisor	Digital asset custodial wallet provider
Required license under the Digital Asset Decree	License from the MOF upon the recommendation of the SEC.		
Key qualifications for license application	Company established in Thailand.		
Required paid-up registered capital	<ul style="list-style-type: none"> For asset-keeping managers, or managers who provide services to non-institutional customers ≥ THB 25 million. For non-asset keeping managers who provide services only to institutional customers ≥ THB 10 million. 	<ul style="list-style-type: none"> For an advisor ≥ THB 1 million. 	<ul style="list-style-type: none"> For a custodial wallet provider ≥ THB 50 million.
Net capital (NC) maintenance	Fund manager, advisor, and custodial wallet provider must maintain net capital as prescribed by the applicable regulations.		
Consideration under AML and CTF laws	The operator will be considered as a "financial institution" under the AML and CTF laws and must comply with several obligations, including KYC and CDD and transaction reporting.		
Fees	<ul style="list-style-type: none"> 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. 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. 	<ul style="list-style-type: none"> License fee: THB 15,000 for operating a cryptocurrencies advisor; THB 15,000 for operating as a digital tokens adviser. Annual fee: THB 25,000. 	<ul style="list-style-type: none"> License fee: THB 1 million for operating a digital asset custodial wallet provider. Annual fee: 0.001 percent of the total value under custody; the annual fee is in the range of THB 0.25 million – THB 10 million.
	License application fee: THB 30,000 per license.		License application fee: THB 50,000 per license.

The SEC held a public hearing on 25 July 2022 regarding the qualifications of authorized directors and c-suite management. This public hearing proposed the amendments to the required experiences and set out the composition of board directors and audit committee.

In addition, the SEC aims to increase the paid-up registered capital and adopt a risk-based capital structure for ongoing Net capital (NC) maintenance. Please note that the proposed rule above has not yet been finalized and is subject to the SEC's final decision.

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.

Restriction on deposit taking and lending services

Since June 2023, digital asset business operators are restricted from providing, supporting, or advertising any services that involve deposit taking and lending. The prohibition includes promising returns or benefits from depositing the digital asset with the digital asset business operator, unless;

- the staking of digital assets are part of blockchain consensus mechanism,
- it is a distribution of the digital assets received from a blockchain hard fork or soft fork and the airdrop from token issuers,
- it is a promoting activity which is in line with the SEC's marketing rules, and
- it is general information or knowledge sharing on decentralized finance.

Advertisements

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) is prohibited.

IT standards

To ensure business operators' IT security, the SEC sets 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.
- Setting the requirements and guidelines to be in line with international standards and financial IT regulations.

Wallet management and key management

In December 2022, the SEC issued regulations and guidelines regarding wallet and key management, which became effective on 16 January 2023. According to the regulations, the digital asset operators that keep customers' assets must prepare: 1) policy and guidelines for overseeing risk management and management of digital wallets; 2) policy and procedures for developing and managing digital wallets securely; and 3) a contingency plan in case an event occurs that may affect the management system of digital wallets and keys. These requirements could be used as references for the SEC's minimum standards concerning wallet and key management. In practice, it requires a thorough review of the policies and operational systems to ensure that the business operators comply with the minimum standard set out by the SEC.

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.

Part III. Anti-money laundering regulations

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.

Identification and Verification - Thai Individual Customers				
F2F** (Face to Face)			NON F2F** (Non Face to Face)	
	Data and Evidence Verification The reporting entity must do one of the following	Customer Verification	Data and Evidence Verification The reporting entity must do one of the following	Customer Verification
Low	1 Dip chip + Online DOPA	 Verified by staff	1 Dip chip + Online DOPA	 <ul style="list-style-type: none"> Selfie Facial comparison (Staff/Biometrics)
	2 Dip chip + Checking data with an ID card		2 Dip chip + Checking data with an ID card	
	3 Verifying data through government databases		3 Verifying data through government databases	
	4 The staff verifying evidence and approving the data		4 The staff verifying evidence and approving the data	
Medium	1 Dip chip + Online DOPA	 Verified by staff	1 Dip chip + Checking data with an ID card	 <ul style="list-style-type: none"> Selfie Liveness detection Facial comparison (Staff)
	2 Dip chip + Checking data with an ID card		2 Laser ID + Online DOPA	
	3 Laser ID + Online DOPA		2 Verification using biometrics	
	4 Verifying data through government databases		2 Selfie	
High	1 Dip chip + Online DOPA	 Verified by staff	1 Dip chip + Online DOPA	 <ul style="list-style-type: none"> Selfie Liveness detection Facial comparison (Biometrics)
	2 Verification using 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.

Part IV: Baker McKenzie Bangkok – FinTech and digital asset expertise

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



Businesses wishing to integrate blockchain into their services

- 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.



Infrastructure platform and collaboration projects

- 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



Issuer







- Structure digital token offering and tokenization projects for legal compliance
- Prepare project documents including prospectus and white paper) reflecting commercial needs and compliance with laws.
- Consult with regulators when appropriate.



ICO portal

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

Digital asset businesses

 Digital asset exchange	<ul style="list-style-type: none">▪ 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.
 Digital asset broker	
 Digital asset dealer	
 Digital asset advisor	
 Digital asset fund manager	
 Digital asset custodial wallet provider	

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 200 legal matters during 2019-2023

- 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.

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Baker McKenzie delivers integrated solutions to complex challenges.

Complex business challenges require an integrated response across different markets, sectors and areas of law. Baker McKenzie's client solutions provide seamless advice, underpinned by deep practice and sector expertise, as well as first-rate local market knowledge. Across more than 70 offices globally, Baker McKenzie works alongside our clients to deliver solutions for a connected world.

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