A Complete Guide to Regulations on Cryptocurrencies and ICOs in Thailand
(law as of 14 September 2018)
The advent of Cryptocurrencies and Initial Coin Offerings (ICOs) around the world has resulted in a broad set of how each jurisdiction is handling the fast-growing Cryptocurrency and ICO industry. There are multiple emerging patterns which governments apply to its own jurisdiction. This guide aims to dissect the regulatory landscape of digital assets in Thailand.


The main regulator for the Digital Asset Business Decree is the Office of the Securities and Exchange Commission (the "SEC Office") and for the Amendment of the Revenue Code Decree is the Revenue Department. Regulatory authorities periodically issue sub-regulations to stipulate the regulatory requirements and ongoing compliance for industry parties.
The following is an overview of how Digital Assets\textsuperscript{1} are regulated and taxed in Thailand.

\textsuperscript{1} “Digital Assets” are defined as Cryptocurrencies and Digital Tokens.
How can we differentiate between Cryptocurrencies and Digital Tokens and how are these items regulated?

Currently, under Thai law, Digital Assets comprise of two types of electronic assets, namely "Cryptocurrencies" and "Digital Tokens". In addition, Cryptocurrencies are deemed as Digital Tokens if the issuer has the intention to raise funds from the public and if such Cryptocurrencies determine rights of an investor to participate in an investment into any project or business (i.e., investment token), or rights to receive specific goods, services or as agreed (i.e., utility token), and other electronic data units as designated by the SEC.

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2. "Cryptocurrencies" are defined as electronic data units which are created on an electronic system or network for the purposes of being used as a medium of exchanging goods, services, rights, and trade of Digital Assets, and other electronic data units as designated by the SEC.

3. "Digital Tokens" are defined as electronic data units created on an electronic system or network for determining (1) rights of an investor to participate in an investment in any project or business (i.e., investment token) or (2) rights to receive specific goods, services, or other rights as agreed between an issuer and a holder (i.e., utility token), and other electronic data units as designated by the SEC.
particular projects or businesses or (2) determine the rights to receive specific goods, services or any other rights as agreed upon by the parties.

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

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Any Digital Assets which fall under the definition of Cryptocurrencies or Digital Tokens will be regulated under this law, except for certain types of Digital Assets which fall under the scope of the exemptions as stipulated under the current law.

As of 14 September 2018, there are currently seven Cryptocurrencies in which the SEC Office has included into its initial list of approved Cryptocurrencies, which may be used as consideration for the exchange of Digital Tokens issued by way of an ICO or to be traded as trading pairs. These approved Cryptocurrencies consist of Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, Litecoin, Ripple, and Stellar. The SEC Office may further designate other Cryptocurrencies into its approved list by taking into account several factors e.g. the liquidity, demand and genuine decentralization of such Cryptocurrencies.

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4 Approved to be used as consideration for exchange or trading pairs, not as a legal tender
Insights into Thailand's Regulatory Regime on Cryptocurrencies and ICOs

The key take-away of the Digital Asset Businesses Decree is that there are two activities which are regulated under this law, namely (1) the offering of Digital Tokens to the public in the primary market and (2) the operation of Digital Asset Businesses in the secondary market.
(1) Offering of Digital Tokens to the Public

A. Regulated Items: blue box of regulated items

- Offering activity is regulated

- Investment tokens
- Utility tokens
- Cryptocurrencies as digital tokens

- Exempted from requirements for offering activity

- Digital tokens by the Bank of Thailand (BOT)
- Utility token which its underlying products or services are ready-to-use as of the date of the ICO
- Cryptocurrencies
B. Relevant Parties

- **Issuers**

Issuers 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 ICO Portal**.

- **ICO Portals**

Once an ICO Portal has received the SEC's approval, it will be obligated by law to conduct **due diligence and a certain screening process**. However, the inspection by ICO Portals is not the final stage of approval for a prospective issuer, as the SEC Office may still reject any proposed ICO project if it considers that the ICO project in question conflicts with public policy or on other reasonable grounds.

(2) Operation of Digital Asset Businesses

A. Regulated Activities

- Generally, all Digital Asset Business operators are subject to licensing and regulatory requirements. However, **there are three specific events where operators could fall under certain regulatory exemptions** although they operate the business related to Digital Assets.

 (1) Business operations executed by the Bank of Thailand (BOT), which could be considered as Digital Asset Businesses, provided that the Digital Assets are issued and processed by the BOT.

 (2) The business operations of an exchange, broker, or dealer which offer Digital Tokens exchange services, provided that (i) the exchange would be done solely among the same types of Digital
Tokens and (ii) such Digital Tokens are utility tokens (or other Digital Tokens that entitles the holder to receive the right from utility tokens), which the underlying products or services must be ready-to-use as of the date of the ICO.

(3) Digital Asset Brokers or Digital Asset Dealers who provide services of sale or purchase only for Digital Assets whose issuer has pegged the value against the Thai Baht at a fixed exchange rate and has a clear mechanism to fix such value. The sale or purchase of Digital Assets must be done in exchange for Thai Baht, at the specified value only and the payment must be made through a financial institution recognized under AML law.

B. Relevant Parties

- Digital Asset Businesses include (1) Digital Asset Exchange\(^5\), (2) Digital Asset Broker\(^6\), and (3) Digital Asset Dealer\(^7\), or any other businesses as designated by the Minister of Finance (MOF). All these operators must obtain a license from the Minister upon the recommendation of the SEC and must comply with certain regulatory requirements.

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\(^5\) "Digital Asset Exchange" means a center or a network established for the purposes of purchasing, selling or exchanging Digital Assets, operating by matching or arranging the counterparties or providing a system or facilitating a person who is willing to purchase, sell or exchange Digital Assets to be able to enter into an agreement or match the order, in the normal course of business, but not including the system or network as specified by the Office of the SEC.

\(^6\) "Digital Asset Broker" means a person who services or holds himself out to the public as available to be a broker or an agent for any person in the purchase, sale or exchange of Digital Assets to other persons in the normal course of business, in consideration of a commission, fee, or other forms of remuneration, but not including brokers or agents in the manner as specified in the notification of the SEC.

\(^7\) "Digital Asset Dealer" means a person who services or holds himself out to the public as available to purchase, sale or exchange of Digital Assets for his own account in the normal course of business outside a Digital Asset Exchange, but not including dealers in the manner as specified in the notification of the SEC.
What role can you play and what are the implications?

(1) Offering of Digital Tokens to the Public

Key Criteria
- Company established in Thailand with registered capital ≥ 5 million Baht
- Have a proper working system with sufficient responsible staff
- Directors, executive directors, persons with management power must not have prohibited characteristics prescribed by the SEC Office
- Must not have a risk on financial status or conflict of interest

Major Roles
- Toward ICO projects
  - Due diligence on Digital Tokens, registration statement and prospectus, source code, qualifications of issuer and etc.
- Toward investors
  - KYC/CDD investors, categorize and inform rights and limitations, provide knowledge test.

Key Criteria for SEC’s Approval
- Issuer Entity
  - Company established in Thailand
  - Directors, executive directors, persons with management power must not have prohibited characteristics prescribed by the SEC Office
  - must have a sound business plan
  - must have the audited financial statements compiled with Thai Financial Reporting standards by an auditor whose name is in the approved list or as prescribed by the SEC Office

- Digital Tokens
  - obviously clarify that it is an investment token or utility token and clearly determine holders’ right
  - source code must be disclosed

- Registration Statement and Prospectus
  - must cover key elements prescribed by the SEC Office

*Offering limit for retail investors in a deal: the higher of
(1) ≤ 4 times the shareholders’ equity of the issuer; or
(2) ≤ 70% of the total offering amount

(2) Digital Asset Businesses

Persons or entities intend to invest in Digital Tokens
- Digital Asset Exchange
  - paid-up registered capital ≥ THB 50 million for exchange, ≥ THB 10 million for non-asset keeping exchange
  - maintain shareholders’ equity ≥ half of specified paid-up registered capital
  - product screening
  - asset safekeeping
  - fair marketplace

- Digital Asset Broker
  - paid-up registered capital ≥ THB 25 million for broker, ≥ THB 5 million for non-asset keeping broker
  - maintain shareholders’ equity ≥ half of specified paid-up registered capital
  - asset safekeeping

- Digital Asset Dealer
  - paid-up registered capital ≥ THB 5 million for dealer, ≥ THB 1 million for non-asset keeping dealer
  - maintain shareholders’ equity ≥ half of specified paid-up registered capital

*Approved Cryptocurrencies consist of Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, Litecoin, Ripple and Stellar which must also be obtained from the sale, exchange or deposit with approved Digital Asset Business operators (as of 14 September 2018)
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 of the prohibited characteristics prescribed by the SEC Office (e.g. relating to bankruptcy, criminal offenses under certain laws).

- The company must have a *fundamentally sound business plan* with audited financial statements which are in compliance with Thai Financial Reporting Standards by an auditor recognized by the SEC Office or meet the qualifications as prescribed by the SEC Office.

B. Digital Tokens

- Digital Tokens must be *explicitly characterized* as an investment token or utility token and the company must *clearly state the rights* of the holders or investors and 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 from time to time.

- The business plan or the system used by the operator must also sufficiently demonstrate that it is capable of ensuring that the terms
and conditions of the smart contract would be enforceable and must not be exploitative of investors.

C. Registration Statement and Prospectus

- Issuers must **file a registration statement and a draft prospectus** to obtain approval from the SEC Office prior to the offering. The issuer may commence the offering process only once the registration statement and the prospectus have become effective (approved by the SEC).

D. The Offering Process

- Offering may only be done through an **approved ICO Portal** and only to **certain types of investors** as follows:
  
  - Institutional Investors, Ultra High-Net Worth, Private Equity, Venture Capital. These investors may invest without limitation.
  
  - Retail investors. The SEC Office has placed an investment limit of THB 300,000 per person per round of offering. In the other words, a retail investor may only invest up to THB 300,000 into a particular ICO, but is free to invest up to THB 300,000 into other ICOs, and so on.
    
    - In addition, the offering limit for retail investors in each round of offering is the higher of ≤ 4 times the shareholders' equity of the issuer; or ≤ 70% of the total offering amount
  
  - The offering may be a one-time or a shelf offering.
  
  - The issuer may receive *"Thai Baht" or "Approved Cryptocurrencies by the Office of the SEC"* (as discussed above) to be used for payment in exchange with the Digital Tokens. These Cryptocurrencies must be
obtained from the sale, exchange or deposit with approved Digital Assets Businesses

E. Relevant Fees

- Application fees:
  - Submission during 1 January 2018 - 31 December 2018: THB 100,000
  - Submission during 1 January 2019 - 31 December 2019: THB 200,000
  - Submission as of 1 January 2020 onward: THB 300,000

- Submission of a registration statement and prospectus (filing - for initial disclosure of information): THB 300,000.

- Submission of registration statement and prospectus (filing - for effectiveness):
  - Filing submitted during 1 January 2018 - 31 December 2018: 0.07% of the total value of digital token offered for sale
  - Filing submitted during 1 January 2019 - 31 December 2019: 0.06% of the total value of digital token offered for sale
  - Filing submitted as of 1 January 2020 onwards: 0.05% of the total value of digital token offered for sale
A. ICO Portal

- An ICO Portal business requires **prior approval** from the SEC before it is able to commence operations.

- ICO Portals must be a company (either private or public) established in Thailand with its registered capital of not less than THB 5 million, with a proper working system, due management structure and sufficient responsible personnel to operate the ICO Portal. The financial status of the ICO Portal operator must be in a good condition and should not pose any potential risks to its customers.

- The directors, executive directors, and persons with management power of ICO Portal must not have any prohibited characteristics as prescribed by the SEC.

- The major responsibilities of ICO Portals are **similar to Financial Advisors (FAs)** in traditional IPO deals and funding portals in equity crowdfunding deals.

  - **Responsibilities toward ICO projects:** ICO Portals are to conduct an analysis to ensure the characteristics of the Digital Tokens to be offered, the qualifications of the issuer and the accuracy of the registration statement and prospectus, as well as the accuracy of any information disclosed on the ICO Portal as required by the Office of the SEC.

  - **Responsibilities toward investors:** KYC/CDD Investors, categorize and inform their rights and limitations, provide a knowledge test.
ICO Portals will be considered as a 'Financial Institutions' under AML/CTF laws and must comply with several obligations, including KYC/CDD and transaction reporting, etc.

B. Relevant Fees

- Application fee: THB 50,000
- Annual fee: THB 100,000

For public offerings of Digital Tokens:

- For Institutional Investors, Ultra High-Net Worth, Private Equity, Venture Capital: No limit.
- For Retail Investors: 300,000 THB per person per round of offering.

For trading Cryptocurrencies or Digital Tokens in an Exchange or with a Dealer or a Broker: No limit
## Operators of Digital Asset Businesses

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<thead>
<tr>
<th></th>
<th>Digital Asset Exchange</th>
<th>Digital Asset Broker</th>
<th>Digital Asset Dealer</th>
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</thead>
<tbody>
<tr>
<td><strong>Required License</strong></td>
<td><strong>License</strong> from the Minister upon the recommendation of the SEC, namely Digital Asset Exchange</td>
<td><strong>License</strong> from the Minister upon the recommendation of the SEC, namely Digital Asset Broker</td>
<td><strong>License</strong> from the Minister upon the recommendation of the SEC, namely Digital Asset Dealer</td>
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<tr>
<td><strong>Key qualifications</strong></td>
<td>- Company established in Thailand</td>
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<td>for license application</td>
<td>- <strong>Paid-up registered capital must be ≥ THB 50 million</strong> for normal exchange or ≥ THB 10 million for non-asset keeping exchange</td>
<td>- <strong>Paid-up registered capital must be ≥ THB 25 million</strong> for normal broker or ≥ THB 5 million for non-asset keeping broker</td>
<td>- <strong>Paid-up registered capital must be ≥ THB 5 million</strong> for normal dealer or ≥ THB 1 million for non-asset keeping dealer</td>
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<tr>
<td><strong>Key compliance</strong></td>
<td>- Maintain its shareholder's equity ≥ half of specified paid-up registered capital</td>
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<td></td>
<td>- Must screen products and maintain appropriate cyber security systems, asset safekeeping, and a fair marketplace</td>
<td>- Must take into account the client's suitability and maintain appropriate cyber security systems, and asset safekeeping</td>
<td>- Must maintain appropriate cyber security systems</td>
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<td><strong>Requirements for</strong></td>
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<td><strong>trading pairs</strong></td>
<td>The operator can receive &quot;Thai Baht&quot; or &quot;Cryptocurrencies listed by the Office of the SEC&quot; to be used as trading pairs. These Cryptocurrencies must be obtained from the sale, exchange or deposits with approved Digital Assets Businesses.</td>
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<td><strong>Consideration</strong></td>
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<td><strong>under AML/CTF laws</strong></td>
<td>The operator will be considered as a 'Financial Institution' under AML/CTF laws and must comply with several obligations, including KYC/CDD and transaction reporting, etc.</td>
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<tr>
<td>Fees</td>
<td>Digital Asset Exchange</td>
<td>Digital Asset Broker</td>
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<td></td>
<td>License fee: THB 2.5 million for operating Cryptocurrencies exchange and THB 2.5 million for operating Digital Tokens exchange</td>
<td>License fee: THB 1.25 million for operating Cryptocurrencies broker and THB 1.25 million for operating Digital Tokens broker</td>
<td>License fee: THB 1 million for operating Cryptocurrencies dealer and THB 1 million for operating Digital Tokens dealer</td>
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<td></td>
<td>Annual fee: 0.002% of the total trading value and the annual fee is in the range of THB 0.5 million - THB 20 million</td>
<td>Annual fee: 0.001% of the total trading value and the annual fee is within the range of THB 0.25 million - THB 10 million</td>
<td>Annual fee is 1% of the profit from the dealing of Digital Assets and the annual fee is charged within the range of THB 0.1 million - THB 5 million</td>
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<td></td>
<td>License application fee: THB 30,000 for each license</td>
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<td>License application fee: THB 30,000 for each license</td>
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</table>
Financial Institutions' Participation

Scope of potential business operation under the BOT's guidance\(^8\) in relation to each company in the financial institution's financial group

<table>
<thead>
<tr>
<th>Financial Institutions</th>
<th>Issuer of Digital Tokens</th>
<th>ICO Portal</th>
<th>Digital Asset Businesses</th>
<th>Investment in ICO (Primary Market)</th>
<th>Investment in Crypto-currencies (Secondary Market)</th>
<th>Advisory</th>
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<tr>
<td>Securities Companies</td>
<td>✓</td>
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<td>Asset Management Companies</td>
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<tr>
<td>Insurance Companies</td>
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<td>Venture Capitals</td>
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</tbody>
</table>

- ✓ Able to conduct with prior approval from the SEC and compliance with regulations of relevant authorities
- × For the time being, the BOT has requested cooperation on not participating.
- + Financial Institutions can only solicit or provide any advice for investment in digital assets to customers who are institutional investors, ultra high net worth investors, and high-net worth investors.
- + For other companies in the financial group that are not specifically regulated by specific regulators, the parent company must obtain approval from the BOT on a case-by-case basis.

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\(^8\) In accordance with the BOT's circular letter no. TorPorTor.ForNorSor.(23)Wor. 1759/2561, dated 1 August 2018
4 What's next?

Based on the latest news, the SEC Office is currently considering a number of issues including the *pre-ICO regulatory requirements* to be imposed on the issuers of such pre-ICO projects. There may be certain limitations placed on the types of investors who are permitted to invest in the pre-ICO projects while due diligence exercises conducted by ICO portals may be less rigid (i.e. ICO portals may not need to conduct full due diligence on the projects but the process of screening for fraud and other risks would still be applicable).

In addition to investment tokens and utility tokens, *asset-backed tokens* are being considered by the SEC Office and the regulatory ambit of the SEC Office may expand to also include them in the near future. To this end, there may be further developments within our regulatory landscape which we should all keep our eyes on. However, this is subject to the final regulations.

5 Tax Implications

Currently, Thailand has a specific tax law addressing tax implications for digital asset businesses and the ICO industry. A *share of profit* or *any benefit* derived from holding or having possession of Digital Tokens and capital gains from the transfer of Cryptocurrencies or of Digital Tokens is classified as taxable income under the Revenue Code. Any individual (both Thai and non-Thai tax residents) who derives such income will be subject to a withholding tax at the rate of 15 percent. It is important to note that the 15% withholding tax is not a final tax, which means that the individual recipients will still be required to include such income into their personal income tax return filing. Net income is subject to personal
income tax at progressive rates of 5% to 35%. The 15% withholding tax is creditable against the personal income tax payable. In addition, the 15% withholding tax will be imposed on non-Thai tax resident corporate entities under the existing tax law, while Thai tax resident corporate entities would be required to include such income in their corporate income tax return filing. Net profits are subject to corporate income tax at 20%.

According to information released via a press conference held by the Ministry of Finance and the Revenue Department on 15 May 2018, Digital Assets are regarded as intangible assets under the existing VAT law and the trading of Digital Assets would therefore be subject to VAT. However, it is likely that the Revenue Department will issue certain legislation in the near future to impose withholding tax on Thai corporate entities, which is likely to be at 15% and to exempt VAT on the trading of Digital Assets by individuals through authorized exchanges. We need to wait and see the progress on this matter.

However, there are other significant tax issues that have not yet been addressed. A number of which should become clearer once the sub-regulations relating to tax are issued. For example, whether and how the ICO issuer is required to recognize the proceeds received from the issuance of different types of Digital Tokens as its taxable income for tax purposes, whether the issuance of Digital Tokens is subject to VAT, and the method used to determine the procurement cost of Cryptocurrencies in case they were acquired through mining. These are some key tax issues that the relevant authorities are considering and that the investors should keep an eye on for future development.