

A COMPARISON OF DEVELOPMENTS IN
**CRYPTOCURRENCY
REGULATION**



GOVERNMENTS ACROSS THE REGION ARE BEING FORCED TO CLEAR THE REGULATORY AIR ON VIRTUAL CURRENCIES AS THEY CAN NO LONGER AFFORD TO IGNORE THEIR POPULARITY

THAILAND



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At present, cryptocurrencies are widely used as a means of exchange for goods and services, as well as being a tool for raising funds and another option for investment, for example, by raising digital tokens in exchange for cryptocurrencies.

Although cryptocurrencies are not a lawful currency, and do not have legal tender status in Thailand, there was a case in 2018 in which a Thai fintech company successfully raised funds from the public by using digital tokens, and Thai laws and regulations had not been enacted to govern such activities at the time.

This development with respect to cryptocurrencies and digital tokens could have potentially affected both the general public and financial stability, causing the Royal Enactment on Digital Asset Businesses BE 2561 (REDA), 2018, to be promulgated, which has been effective from 14 May 2018 onward, and aims to regulate the offering of digital assets and businesses undertaking digital asset-related activities in order to be equipped to facilitate and support the technological innovations driving the economy and society, including protecting against any schemes designed for deceiving the general public.

The REDA regulates digital assets, i.e., cryptocurrencies and digital tokens, and is mainly divided into the governing of the offering of digital tokens and the governing of digital asset business operators, in which the main authority in charge of supervising the REDA is the office of the Securities and Exchange Commission (SEC).

A cryptocurrency is defined as a type of electronic data unit built on an electronic system or network, which is created for the purpose of being a medium of exchange for the acquisition of goods, services or other rights, including exchanges between digital assets. A digital token is defined as a type of electronic data unit built on an electronic system or network for the purpose of specifying the right of a person to participate in an investment in any project or business, or to acquire specific goods, services or other rights under an agreement between the issuer and the holder.

Currently, there are certain recognized cryptocurrencies in Thailand that an offeror of digital tokens, or an operator of a digital asset business, can accept as consideration for transactions, e.g., Bitcoin, Ethereum, Ripple and Stellar.

Offerings of digital tokens

The offering of digital tokens is one of the ways to raise capital from the public, whether raising a fiat currency or cryptocurrency. A public offering of digital tokens is commonly known as an initial coin offering (ICO). The offering of digital tokens is permitted by issuers that are limited or public limited companies, incorporated under the laws of Thailand, and the tokens must be offered through an approved ICO portal.

Prior to an offering, an issuer is required to obtain approval and submit a registration statement and prospectus to the office of the SEC. In this regard, if there are any false statements, or failures to disclose material facts, in the registration statement and prospectus, there will be civil and criminal liabilities for the issuer, the directors, and the executives who certify such documents.

The SEC will consider granting approval for an offering of digital tokens that meets certain requirements, including that they must be qualified, e.g., being investment or utility tokens and having in place an enforceable smart contract comprising a business plan and mechanism for exercising rights under digital tokens by the holders.

The approval of a public offering of digital tokens is subject to certain conditions, including that it can only be offered to a limited group of qualified investors, for instance, specific institutional investors or accredited investors. In the case of an offering to retail investors, digital tokens can only be offered for up to THB300,000 (approximately US\$9,200) per person, and shall not exceed four times an issuer's equity, or shall not exceed 70% of the total offering size, whichever aggregate amount is higher.

The SEC also provides a private placement regime for the offering of digital tokens to

certain groups of investors, e.g., offering to only qualified investors, or offering to only a limited amount of investors, or offering only up to a limited offering size within a specified timeframe, in which a deemed approval would be granted from the SEC and the offeror would thereby be exempted from filing a registration statement and prospectus with the SEC.

In addition, the offering of digital tokens must be done through a business operator known as an ICO portal. The eligibility criteria and obligations for an ICO portal include: Being a company established under the laws of Thailand; having minimum registered capital as prescribed by SEC regulations; establishing issuer due diligence and product screening systems; examining issuers' business plans and source codes of smart contracts; conducting know-your-customer (KYC) and customer due diligence (CDD); and providing suitability tests for retail investors.

Currently, there are a few approved ICO portals in Thailand, including Longroot, T-BOX, and SE Digital. In this regard, if digital tokens are issued for the purpose of the issuer receiving a cryptocurrency, such a cryptocurrency must be obtained from, or deposited with, digital asset business operators licensed under the REDA.

Digital asset business operators

The REDA also regulates business operators who are intermediaries for digital assets. These intermediaries are mainly classified into three types, namely, digital asset exchanges, digital asset brokers, and digital asset dealers. A digital asset exchange is a centre or network established for the purposes of trading or exchanging digital assets, which operates by matching orders, or arranging for a counterparty, or providing a system, or facilitating a person who wishes to trade or exchange digital assets in being able to enter into an agreement or match an order, in the normal course of business.

A digital asset broker is a person who provides services, or holds themselves out

to the public as available to provide services as a broker or an agent for any person with respect to the trading or exchange of digital assets in the normal course of business, in consideration of a fee or other remuneration. A digital asset dealer is a person who provides services or holds themselves out to the public as available to provide services with respect to the trading or exchange of digital assets, for their own account, in the normal course of business, outside of digital asset exchanges.

Any person who wishes to operate a digital asset business is required to establish itself as a Thai company and be granted a licence from the Minister of Finance on the recommendation of the SEC. In this regard, entities that will be granted such a licence shall be required to have the characteristics as prescribed in the Ministerial Regulation issued under the REDA.

In addition, licensed digital asset businesses are required to comply with the rules, conditions and procedures set out by the SEC, which include, among other things, having adequate sources of capital to cover business operations, risk management, segregating client assets from their own assets, and conducting KYC and CDD.

Furthermore, digital asset business operators are subject to anti-money laundering laws in order to prevent the wrongful exploitation of digital assets as a channel for money laundering.

Similar to securities law, the REDA imposes offences with respect to unfair trading relating to the purchase, sale or exchange of digital assets taking place in any digital asset exchange, such as false

dissemination, insider trading, front running and market manipulation.

The lists of digital asset business operators licensed by the SEC can be accessed at <https://www.sec.or.th/EN/Pages/Shortcut/DigitalAsset.aspx>.

Future developments

Although the laws and regulations concerning cryptocurrencies in Thailand are in their initial stages, growth in their number and developments with regard to areas of rules are definitely to come in the near future. The Bank of Thailand (BOT) allows financial institutions to offer services in relation to cryptocurrencies, or investment in cryptocurrencies, by testing and developing such services under a regulatory sandbox programme.

The BOT may consider prescribing rules for securities purposes in order to cover risks of commercial banks, and their consolidated group digital assets, in relation to conducting or being involved with the digital assets in the future. In addition, many areas of digital assets involve other areas of law, for example, electronic transactions, payment systems, or data privacy, in which relevant regulations need to be observed and complied with in the order for services in relation to digital assets to be provided in Thailand.

As for cross-border cryptocurrency service providers, practical guidelines should be implemented and providers should seek advice from legal experts with regard to issues of concern, and for specific questions on permissible marketing activities and the nature of services allowable to be provided in Thailand.



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