

# DIGITAL ASSETS, DIGITAL TOKENS AND CRYPTOCURRENCIES

## 1. Major Legislations

- (1) The Digital Asset Business Operation Emergency Decree B.E. 2561 (A.D. 2018) (“**DABO**”).
- (2) The Revenue Code Amendment (No. 19) Emergency Degree B.E. 2561 (A.D. 2018) (“**ARCA**”).
- (3) Implementation rules and regulations for implementing the laws under (1) and (2) issued by the Ministry of Finance (“**MOF**”) and the Securities and Exchange Commission (“**SEC**”).

## 2. Digital Assets

The “**digital assets**” are defined as Cryptocurrency and Digital Token.

- (1) “**Cryptocurrency**” is a unit of electronic data created in an electronic system or an electronic network with objectives to be used as a medium for the exchange of goods, services or other rights through a medium of exchange between digital assets, including a unit of other electronic data to be determined by the SEC.
- (2) “**Digital Token**” is a unit of electronic data created in an electronic system or an electronic network with the objectives of (i) determining the rights of a person who invests in any project or activity and (ii) determining rights to acquire goods, services or other rights as determined by the SEC pursuant to an agreement between an issuer and a holder, including any other rights to be determined by the SEC.

Cryptocurrencies are deemed digital tokens if they are issued for raising funds from the public and if they create one of the following rights to investors (i) rights to jointly invest in a project or activity; or (ii) rights to acquire goods or services or other rights.

Digital assets may also include other electronic data to be prescribed by the SEC in the future.

Securities under the securities law are not a digital asset.

## 3. Digital Asset Businesses

Digital asset businesses consist of:-

- (1) digital asset exchange

- (2) digital asset broker
- (3) digital asset dealer
- (4) other activities related to digital assets to be prescribed by the MOF per recommendation of the SEC.

#### **4. Paid-Up Registered Capital and Maintenance of Capital Funds**

The licensed digital asset business operators (“**Operators**”) must have their paid-up registered capital of not less than: THB50 million for digital asset exchange, THB25 million for digital asset broker and THB5 million for digital asset dealer.

The Operators must also maintain their capital funds in amounts not less than: THB25 million for digital asset exchange, THB12.5 million for digital asset broker and THB2.5 million for digital asset dealer. The minimum capital funds to be maintained are lower if they do not keep assets of customers in custody.

#### **5. Use and Transaction of Digital Assets**

The same type and the same amount of cryptocurrency or digital token can be used interchangeably for any delivery, transfer, possession or return of cryptocurrency or digital token.

Only cryptocurrencies received from sales and purchases, exchanges or deposits with licensed Operators can be used as a remuneration or used for legal transactions subject to the conditions prescribed by the SEC.

#### **6. Directors and Executives of Operators**

An approval for appointment of a director or an executive of Operators must be obtained from the SEC. A report must also be filed with the SEC within 7 days from the date of appointment or termination of each director or executive.

The executives of Operators include their manager, deputy manager, assistant manager, director of department or other person in an equivalent position responsible for their management, supervision, determination of policy, customer service, management of information technology systems, registration of digital assets, etc.

The prohibited characters of directors and executives of the Operators include being bankrupt, used to be imprisoned due to offence related to handling assets dishonestly, used to be a director of a financial institution of which license was revoked.

## 7. Major Shareholders of Operators

The “**major shareholder**” of the Operator is a person or legal entity who directly or indirectly holds more than 10% of its shares with voting rights. Such major shareholder must not have the prohibited characters specified by the SEC.

No person can dominate, control or manage the Operator, except for its shareholders exercising rights in shareholder meetings and in managing the Operator under an agreement approved by the SEC.

An approval must be obtained from the SEC before the Operator can sell its newly issued shares for its capital increase to a new major shareholder.

## 8. Operator Licenses

The Operator must be a private limited company or a public limited company registered in Thailand and obtain a license from the MOF with recommendation of the SEC. The SEC can revoke any license/approval granted to an Operator if the Operator fails to operate its business or suspends its business operation longer than the period approved by the SEC.

If the Operator wishes to cease its business operation, it must obtain approval from the SEC.

The official fees are THB2.5 million for each digital asset exchange license, THB1.25 million for each digital asset brokerage license and THB1 million for each digital asset dealer license. The digital asset operation license is also subject to the annual official fee, such as 1% of the capital gain derived from trading of digital assets (minimum THB100,000 and maximum THB5 million per year).

## 9. Initial Coin Offering (“ICO”) and Digital Tokens

The issuer of ICO of digital tokens must be a private limited company or a public limited company registered in Thailand and obtain approval from the SEC to launch its ICO of digital tokens.

The ICO digital tokens can be offered to only the investors prescribed by the SEC, i.e. institutional investors, individuals with ultra high net worth, venture capital funds, private equity funds and general individual investors (who are not ultra high net worth investors) with maximum investment of THB300,000 per ICO.

The ICO must be made through an ICO portal licensed by the SEC and it can be launched to the public only after its registration statement and its draft prospectus/whitepaper have been approved by the SEC.

The sale of ICO digital tokens must be completed within 6 months from the SEC approval date, extendable to not more than additional 6 months.

A report on business operations, the current financial status, and any information that may affect investment decisions due to the changes in the price or value of digital tokens must be submitted with the SEC.

### **10. ICO Portals**

An ICO portal must be a Thai company with a paid-up registered capital of not less than THB5 million and must obtain a license from the SEC.

An ICO portal is a provider of electronic system services for the ICO of new digital tokens. The ICO portal checks and verifies the characteristics of digital tokens to be offered to the public and the qualifications of the ICO issuer, the completion and correctness of the registration statements, the draft prospectus/whitepaper and other information disclosed to the public by the ICO issuer through the ICO portal.

### **11. Exclusion of Liabilities**

Operators and the ICO portals cannot agree with investors to exclude or limit their liabilities for damages caused from their failure to comply with the SEC regulations.

### **12. Segregation of Assets**

Each Operator must prepare and maintain a list of assets of each customer and must keep such assets separate from its own assets. The assets of customers remain their assets at all times.

The ICO portal must have a system for segregating assets of investors.

### **13. Unfair Acts**

All sales and exchanges of digital assets in a digital asset exchange must be made without the disclosure or certification of any incomplete or false statement or insider trading information that may be misleading in material in relation to financial status, business operations, characteristics and prices of digital tokens, financial status analysis or other information related to an ICO of digital tokens.

### **14. Penalties**

Failure to obtain a required license for digital asset businesses or failure to obtain SEC approval for an ICO or launching ICO without an ICO portal can be subject to an imprisonment up to 2

years and/or a fine up to 2 times of the total sales prices of digital tokens offered by the issuer and the minimum fine must not be less than THB500,000.

Disclosure of a false statements or concealment of any facts that should have been disclosed in a registration statement for an ICO or a draft prospectus/whitepaper filed with the SEC can be subject to an imprisonment of up to 5 years and/or a fine of up to 2 times of the total sales prices of digital tokens offered by the issuer and the minimum fine must not be less than THB500,000.

### 15. Capital Gain Tax

The ARCA imposes tax withholding tax at the rate of 15% on dividends or other benefits derived from the holding or transacting of digital assets in an amount exceeding the investment amount.



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