

DIGITAL ASSET BUSINESS

The Emergency Decree on Digital Asset Business Operation B.E. 2561 (A.D. 2018) (“**EDDABO**”) and the Emergency Degree on Amendment of Revenue Code (No. 19) B.E. 2561 (A.D. 2018) (“**EDARC**”) were published in the Government Gazette on 13th May 2018 and became effective on 14th May 2018.

The Ministry of Finance (“**MOF**”) and the Securities and Exchange Commission (“**SEC**”) have prepared drafts of implementation regulations to implement the EDDABO. They include requirements for licenses to operate digital asset businesses, approvals, shareholders’ equity, official fees, qualifications of directors and executives required for operators of digital asset business operations, etc.

The major provisions of the EDDABO, the EDARC and the drafts of the MOF regulations and the SEC regulations are discussed below.

1. Digital Assets

The digital assets are defined as Cryptocurrency and Digital Token.

- (1) “**Cryptocurrency**” is a unit of electronic information 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 information to be determined by the SEC.
- (2) “**Digital Token**” is a unit of electronic information created in an electronic system or an electronic network with the objectives of (1) determining the rights of a person who invests in any project or activity and (2) 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 right to be determined by the SEC.

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

Securities under the securities law are not a digital asset.

2. Digital Asset Businesses

Digital asset businesses consist of the following business operations:-

- (1) digital asset trading centers
- (2) digital asset brokerage

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

3. 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 digital asset business operator (“**Operator**”) under the EDDABO can be used as a remuneration or used for legal transactions in accordance with the conditions prescribed by the SEC.

The Operators can sell, purchase or exchange digital assets with only Thai Baht or cryptocurrencies determined by the SEC.

The Operators must fully comply with the rules and procedures prescribed by the SEC that include maintaining sufficient funds for business operations, providing security for customers’ assets and electronic piracy, having appropriate accounting, auditing, Know-Your-Customer systems and other matters.

4. Major Shareholders of Operators

A “**major shareholder**” is a person or company who directly or indirectly holds shares of more than 10% of shares that have voting rights in a company that operates digital asset businesses.

Any person is prohibited to dominate, control or manage companies operating digital asset businesses, except for shareholders exercising their rights in shareholder meetings and managing businesses under an agreement approved by the SEC.

An approval must be obtained from the SEC before the sale of newly issued shares form the capital increase to a new major shareholder or within 14 days from the date on which the Operator knows or should have known that the new major shareholder has not yet been approved by the SEC.

5. Directors and Executives of Operators

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

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An executive of operations may include a manager, deputy manager, assistant manager, director of department or other person in an equivalent position under other names who is responsible for management, supervision, determination of policy, customer service, management of information technology systems, registration of digital assets, etc.

6. License

The Operator must obtain a license from the Ministry of Finance under the recommendation of the SEC.

To obtain the license, the Operator must be a private limited company or a public limited company registered under Thai law. Its shareholders' equity must not be less than THB50 million for a trading center license, THB25 million for a brokerage license or THB5 million for a trading license and it must be maintained at all times during business operations. Each director, executive or major shareholder of the Operator must not have prohibited characteristics but they must have required qualifications as prescribed by the SEC.

Any Operator who wishes to cease business operations as approved by the SEC must obtain approval from the SEC.

The SEC can revoke any license/approval granted to an Operator if the Operator fails to operate the business or suspends the business operation longer than the period approved by the SEC.

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

An issuer of digital tokens must be a private limited company or a public limited company. Such an issuer must obtain approval from the SEC for an ICO of his or her digital tokens.

An ICO can only be offered to investors as prescribed by the SEC, i.e. institutional investor, investor with ultra high net worth, venture capital fund, private equity fund, or individual investor (subject to investment limit) and it must be made through a licensed ICO portal after its ICO application and its draft whitepaper becomes effective.

An ICO must be completed within 6 months from its approval date but it can be extended for a period of 30 days up to 12 months upon approval of the SEC. A report on the results of the ICO must be filed with the SEC within 15 days from the closing date of the ICO.

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.

8. ICO Portal for the ICO of Digital Tokens

An ICO portal for digital tokens is a service provider who provides an electronic system for the ICO of new digital tokens and screens the characteristics of digital tokens to be offered. An ICO portal also screens the qualifications of issuers, the completion and correctness of an application

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for initial offering of digital tokens, the draft whitepaper or other information disclosed through it as the ICO portal.

An ICO portal must be a private limited company or a public limited company registered under Thai law with a paid-up registered capital of no less than THB5 million and must obtain a license from the SEC.

9. Segregation of Assets

The Operator must have a list of assets possessed by each customer and must keep such assets separate from its own assets. The assets of customers remain their assets at all times.

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

10. Unfair Acts

The selling and exchanging of digital assets in a trading center must be made without the disclosure or certification of any false statement that may be misleading in material in relation to financial status, business operations, characteristics of digital tokens, prices of digital assets, analysis of financial status or other information related to ICO of digital tokens by using false or incomplete information and insider trading of digital tokens.

11. Penalties

Failure to obtain a required license for digital asset businesses or failure to obtain SEC approval for ICO of digital tokens or launching ICO of digital tokens without using the 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. However, the minimum fine must not be less than THB500,000.

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

12. Capital Gain Tax

The EDARC imposes withholding tax at the rate of 15% on dividends or other benefits derived from the holding or transferring digital assets in an amount that exceeds the investment capital amount.

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