

THAILAND TWO NEW EMERGENCY DECREES ON DIGITAL ASSETS

On 13th May 2018 the Government of Thailand enacted the Emergency Decree on Digital Asset Business Operation B.E. 2561 (“**EDDABO**”) and the Emergency Decree on Amendment of Revenue Code (No. 19) B.E. 2561 (“**EDARC**”) effective from 14th May 2018 to regulate and tax digital assets (cryptocurrencies and digital tokens). Some provisions of the two laws are reported below.

1. Digital Assets and Digital Asset Businesses

Digital assets are categorized as cryptocurrencies and digital tokens. Digital asset businesses are business activities of (1) digital asset trading center, (2) digital asset brokerage, (3) digital asset trader, and (4) other activities related to digital assets to be prescribed by the Minister of the Ministry of Finance (“**MOF**”) per recommendation of the Securities and Exchange Commission of Thailand (“**SEC**”). The SEC is empowered to issue policies to promote, develop, regulate and control digital assets and operators of digital asset businesses.

2. Initial Coin Offering (“ICO”)

Launching an ICO for digital tokens can be made only by a private limited company or a public limited company after an approval has been obtained from the SEC by submitting a filing data form and a draft whitepaper with the SEC.

Offering of digital tokens must be made through an ICO portal licensed by the SEC.

The issuer of digital tokens must file with the SEC a report on its business operation and financial status and any information that may have effect on holders of digital tokens, their investment decisions or create changes in prices or values of digital tokens.

3. Digital Asset Business Operators and Segregation of Assets

The digital asset business operator must obtain a license from the MOF. The MOF grants a license per recommendation of the SEC. Existing digital asset business operators must obtain a license from the MOF within 90 days from 14th May 2018.

A digital asset business operator must keep assets of each customer separately from its own assets. Assets of customers will remain their assets at all times.

A digital business operator can cease its licensed business only after it has obtained approval from the MOF.

4. Prevention of Unfair Practices

The EDDABO has several provisions to prevent unfair acts related to digital asset transactions, such as disclosure or certification of a false or misleading statement in relation to financial status, business operation, characteristics or prices of digital assets. Insider trading of digital tokens is prohibited.

5. Penalties

The EDDABO imposes fine and imprisonment penalties on violation of the EDDABO. For example, launching an ICO of digital tokens without SEC approval or without using an ICO portal is subject to an imprisonment up to 2 years or a fine up to 2 times of the total sales prices of digital tokens offered by the issuer or both but the fine must not be less than THB500,000. Disclosure of a false statement or concealment of facts that should be disclosed in an application for launching an ICO or in a draft whitepaper filed with the SEC is subject to an imprisonment up to 5 years and a fine of up to 2 times of the total sales prices of digital tokens offered by the issuer but the fine must not be less than THB500,000.

6. Capital Gain Tax

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

7. Implementation Rules

The two laws have set out broad and general principles for digital assets and digital asset business operations. The MOF and the SEC are expected to soon issue a number of implementation rules and regulations to implement them. We will keep our readers informed.



Kowit Somwaiya
Managing Partner
kowit.somwaiya@lawplusltd.com



Nattaya Lohasomboon
Associate
nattaya.lohasomboon@lawplusltd.com

LawPlus Ltd.

Unit 1401, 14th Fl., Abdulrahim Place, 990 Rama IV Road, Bangkok 10500, Thailand

Tel. +66 (0)2 636 0662 Fax. +66 (0)2 636 0663

www.lawplusltd.com

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