

## Non-Fungible Tokens (NFTs) Under Thai Law

Non-Fungible Tokens (NFTs) have recently become a global trend. NFTs are created and stored in a blockchain but are different from fungible cryptoassets such as Bitcoin, as they are commonly used to represent an ownership interest in, or a right to, a unique asset in a tangible or intangible form. The regulatory treatment of NFT's is evolving and often will depend upon the characteristics of the particular token. Unlike many countries, Thailand currently provides a specific regulatory regime for digital assets under the Emergency Decree on Digital Asset Businesses Operation B.E. 2561 (“**DA Law**”). Therefore, potential issuers of NFTs should be aware that certain types of NFTs may be considered as a digital asset and fall within the DA Law.

### Legal Status of NFTs in Thailand

“Digital Assets” are defined as cryptocurrencies and digital tokens under Section 3 of the DA Law. As NFTs typically represent unique assets, and are not aimed to be used as a medium for the exchange of goods, services or other rights, they would not, generally, be considered as cryptocurrencies. Where the NFT specifies the right of a person to (1) participate in an investment (investment token) or (2) a specific, good, service or other right (utility token) it is considered a digital token under the DA Law, and any issue will be regulated under this law, except where such Digital Assets come within an exemption.

### Issuing and Trading NFTs in Thailand

The DA Law applies to both investment and utility tokens but, interestingly, the only utility tokens that falls within the regulated activities are utility tokens with underlying services or products that are only available in the future, i.e. they are not ready-to-use at the time of issue of the tokens (SEC Notification No. GorJor.15/2561 concerning Public Offering of Digital Token dated 3<sup>rd</sup> July 2018).

The DA Law regulates two types of activities (1) the offering of digital tokens to the public and (2) the operation of a digital assets business. In order to legally issue and trade a new NFT that qualifies as an investment token, or a utility token that is not “ready to use”, in Thailand, the NFT developer will need to comply with the DA Law and its implementation rules and regulations. For an issue of regulated digital tokens, subject to specific exemptions, an issuer is required to (1) meet certain criteria, (2) get the approval from the SEC and (3) file a registration statement as well as a draft prospectus to the Securities and Exchange Commission (“**SEC**”). Currently, no approval for issuing an NFT has been granted by the SEC.

An offer to the public can proceed once the NFT has been approved by the SEC and after the registration statement and the prospectus have become effective. Such offer can be made only on marketplaces/digital asset exchanges that are licensed by the SEC. However, the SEC has not yet permitted the trading of any category of NFTs on the licensed digital asset exchanges (SEC

Notification No. GorThor. 18/2564 concerning Rules, Conditions and Procedures for Operating Digital Asset Business (No. 11) dated 10<sup>th</sup> June 2021).



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