

REGULATION OF ICOS AND DIGITAL TOKEN OFFERINGS IN THAILAND

12 NOVEMBER 2018 • ARTICLE



This briefing is the first in a four part series which also includes Thailand's Licensing Regime for Digital Asset Businesses, Investor Protection in Thailand for ICOs and Digital Tokens, and LiVE: Thailand's Blockchain-based OTC Platform for Startups.

Thailand's Royal Decree on Digital Assets B.E. 2561 (2018) ("The Act") one of the world's first comprehensive regulatory regimes for cryptocurrency which became effective on 14 May 2018. The Securities and Exchange Commission ("SEC") is the regulatory body in charge under the Act and oversees the licensing of exchanges, brokers and dealers in cryptocurrencies and the approval of Initial Coin Offerings ("ICO") and ICO portals. This briefing outlines the regulation of ICOs and digital token offerings.

"• THAILAND INTRODUCES ONE OF THE WORLD'S FIRST COMPREHENSIVE REGULATORY FRAMEWORKS FOR CRYPTOCURRENCIES AND DIGITAL TOKENS."

THAI REGULATION OF ICOS AND DIGITAL TOKEN OFFERINGS

The Act applies to "digital assets", which include "cryptocurrency" and "digital tokens" and focusses on fundraising through ICOs and the operation of "digital asset businesses" which act as the intermediary between investors and those seeking funding, namely; exchanges, brokers and dealers in digital assets. The Act still leaves the mining of cryptocurrency unregulated.

Cryptocurrency is defined as "electronic data units generated on an electronic system or network for the purpose of being used as a medium of exchange for goods, services or any other right, or between digital assets, and shall include other electronic data as notified by the SEC's."

In other words, cryptocurrencies under the Act are those that function as a means of payment or money.

Digital tokens are defined as "electronic data units generated on an electronic system or network for the purpose of:

1. determining the right of a person to participate in an investment in a project or business; or
2. determining the right to obtain a specific good, service or any other specific right as mutually agreed between the issuer and the holder and shall include such other warrant..."

In colloquial terms, digital tokens in (1) are commonly called equity tokens and digital tokens in (2) are commonly called utility tokens. The SEC has stated that it is still considering how to regulate utility tokens as they function in a similar manner to traditional securities.

The Act permits ICO issuers and digital asset business operators to accept cryptocurrencies as payment for transactions and permits certain cryptocurrencies to be used as a base currency for trading. However, in order to prevent the circulation of potentially laundered cryptocurrencies, cryptocurrencies must come from a licenced digital asset business operator either through a sale, exchange or deposit

i.e. the source of cryptocurrency must be identifiable, and the permitted cryptocurrencies will be prescribed by the SEC, which has expressed the view that the main eligibility criteria will be the degree of liquidity of a cryptocurrency being considered.

So far, seven cryptocurrencies have been approved by the SEC for use as a base currency for trading. These are Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, Litecoin, Ripple and Stellar.

ICO REGULATION

The issuance of an ICO requires approval from the SEC and only companies registered in Thailand can apply for ICO approval. The issuer is required to submit filings and a draft prospectus regarding the ICO issuance for the SEC's approval, and the pool of investors may be limited as the SEC has the power to prescribe the categories of ICO investors which may participate in the ICO. In addition, ICOs can only be made through SEC-approved ICO portals.

It should be noted that an ICO issuer will still be subject to post-approval requirements to report on its operating and financial performance, and disclosure requirements as prescribed by the SEC.

The SEC has the power to exempt certain ICOs for approval and post-approval requirements. The SEC has also expressed its opinion on pending subordinate legislation that only digital tokens and cryptocurrencies which are offered to the public for fundraising purposes will be required to obtain approval. Most utility tokens and cryptocurrencies are likely to be exempt from ICO requirements under the Act.

**"FINTECHS OR
STARTUPS TEND TO
GRAVITATE TOWARDS
LESS CUMBERSOME
AND MORE COST-
EFFECTIVE
FUNDRAISING
PROCEDURES FOR
ICOS."**

Trading digital assets using the primary market or ICO portals is restrictive (in that only Thai-registered issuers are allowed to list their coins in a Thai ICO portal, and the pool of investors may be limited as a result). On the other hand, trading using the secondary market or digital asset exchanges will face fewer restrictions as the SEC will only regulate the screening procedure for cryptocurrencies and digital tokens by exchanges. Accordingly, Thai exchanges will be able to list foreign-issued coins once the SEC provides a clearer picture of the screening procedures.

The SEC expects Thailand's first ICO portal to be certified by the end of November 2018.

These requirements put ICOs on a similar footing to share IPOs and it is perceived

that this may drive away fintechs or startups which tend to gravitate towards less regulated and more cost-effective fundraising procedures for ICOs available in other countries. It remains to be seen whether these requirements which are aimed at protecting investors will dampen investments in digital assets in Thailand, or attract investors seeking the protection of a regulated regime.

CONCLUSION

While certain requirements under the Act may be perceived as disincentivising investments in digital assets, the SEC has expressed its view that regulation in this area is still in development and that it is prepared to fine-tune its role in order to better accommodate the changing environment. In any case, Thailand's speedy attempt to formulate a clear framework for regulating trading and investments in cryptocurrencies and tokens should be welcomed.

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.