

BRIEFING

INVESTOR PROTECTION  
IN THAILAND FOR ICO'S  
AND DIGITAL TOKEN TRADING  
NOVEMBER 2018

- THAILAND'S ROYAL DECREE ON DIGITAL ASSETS B.E. 2561 (2018) AIMS TO ENSURE ROBUST PROTECTION FOR INVESTORS AND THE GENERAL PUBLIC.



This is the third briefing in a four part series which also includes regulation of ICOs and digital token offerings in Thailand, Thailand's licensing regime for digital asset businesses, and LiVE: Thailand's blockchain-based OTC platform for startups.

“AN ICO ISSUER FAILING TO OBTAIN APPROVAL... IS LIABLE TO A MAXIMUM TERM OF IMPRISONMENT OF TWO YEARS AND A FINE OF AT LEAST THB500,000...”

Thailand's Royal Decree on Digital Assets B.E. 2561 (2018) ("The Act") applies investor-protection principles similar to those that apply to listed shares to ensure that the booming investments in cryptocurrencies and tokens are well-protected against any risks from potentially misleading or exploitative actions. This offers greater protection for purchasers of digital assets and follow the approaches taken by other jurisdictions to protect purchasers against insider trading and market manipulation.

**INVESTOR PROTECTION IN THAILAND FOR ICOs AND DIGITAL TOKEN TRADING**

The Act aims to ensure robust protection for investors and the general public. Notable offences consist of offences for failure to obtain a licence or approval, failure to comply with rules regarding ICO issuance, and offences in relation to unfair practices e.g. insider trading.

An ICO issuer failing to obtain approval from the SEC or issuing an ICO through an unapproved ICO portal is liable to a maximum term of imprisonment of two years and a fine of at least THB500,000 capped at double the selling price of all digital tokens offered by such issuer.

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“THE ACT ALSO PROVIDES FOR CIVIL PENALTIES FOR CERTAIN OFFENCES INCLUDING THOSE RELATING TO UNFAIR PRACTICES, DISPLAY OF FALSE STATEMENTS OR CONCEALMENT OF FACTS...”

Unfair practices prohibited under the Act include insider trading, front running and market manipulation. Violation of these unfair practice offences can result in a maximum term of imprisonment of two years, and a fine from THB500,000 to THB2m. The courts can also order the following measures in addition to the criminal penalties:

- disgorging the benefits received or which may be received from the violation;
- a ban from purchasing or selling digital assets in exchanges for a specified period up to five years from the date of judgment or order;
- a ban from holding a position of director or executive of an ICO issuer or a digital assets business operator for a specified period up to 10 years from the date of judgment or order; and
- reimbursement of costs in relation to the investigation to the SEC.

The Act also provides for civil penalties for certain offences including those relating to unfair practices, display of false statements or concealment of facts in relation to ICOs. Civil penalties were recently introduced for similar offences applicable to traditional on securities and exchanges. Civil penalties consist of civil fines and the additional penalties mentioned immediately above, but these are imposed by the Civil Penalty Committee instead of the courts.

#### **INSIDER TRADING & MARKET MANIPULATION**

Insider trading and market manipulation are punishable offences under the Act. “Insider information” is defined as information which has not been disclosed to the general public and which is of significance to the change in price or value of a digital token.

Any person having such knowledge regarding the issue of digital tokens or the nature or key aspects of a digital token is prohibited from carrying out any of the actions (as set out in section 42 of the Act). These include purchasing tokens or entering into futures contracts in relation to digital tokens, whether for their own or another's benefit. Such actions should be avoided unless they fall into one of the exemptions under the Act, which include compliance with laws, the execution of a futures contract relating to a digital token which has been previously entered into, where the information holder has not been complicit or involved in the decision-making but has assigned another person to make decisions on the purchase of a digital token, if the act in question does not take advantage of others.

Those having insider information should avoid disclosing insider information to another person directly or indirectly, or entering into a futures contracts for their own or another's benefit, unless the act does not take advantage of others or has the characteristics prescribed by an SEC notification.

The Act also prescribes types of persons who are presumed to know or have in their possession insider information for the purposes of the Act (“possession-based insiders”). This includes employees of digital token issuers, particularly directors or executives, or employees or officers (where their field of work includes access to insider information). This section also covers ICO portal providers or other individuals whose duties relate to insider information, or any other persons whose work relates to the office of the SEC or digital asset exchange, and is capable of knowing such information as a result of performing their duties. A juristic person

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under the control of a person in each of these capabilities also falls within this section.

The Act also presumes that certain persons whose behaviour does not fit within their ordinary behaviour, will be deemed to have possession of insider information under the Act. These behaviour-based insiders include holders of more than 5% of digital tokens issued in each fundraising round (including those held by family members); in relation to digital token issuers, directors, executives or employees of a group business; or family members of the above possession-based insiders. Here, reference to “group business” includes a parent company, subsidiary company or associate company of a digital token issuer, as prescribed by a SEC notification.

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“THE ACT APPLIES TO ACTIONS TAKEN IN THAILAND, WHETHER TOKENS HAVE BEEN ISSUED IN OR OUTSIDE OF THAILAND.”

In relation to market manipulation, the Act prohibits “submitting a purchase or sale order of digital assets in a manner which misleads people as to the price or trading volume of a digital asset.” The Act also prohibits submitting a purchase or sale order of digital assets, or purchasing or selling digital assets in a continuous manner with the aim of making the price or trading volume of digital assets different from the normal conditions of the market.

Similarly to the applicability of securities law, the Act applies to actions taken in Thailand, whether the tokens have been issued in or outside of Thailand.

#### **CONCLUDING REMARKS**

The Act creates investor protection for ICOs and digital token trading, offering greater protection for purchasers of digital assets. The Act aims primarily to regulate the fundraising aspects of cryptocurrencies and digital tokens to ensure that investors and the general public are well-protected from excessive speculation and exploitation.

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## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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