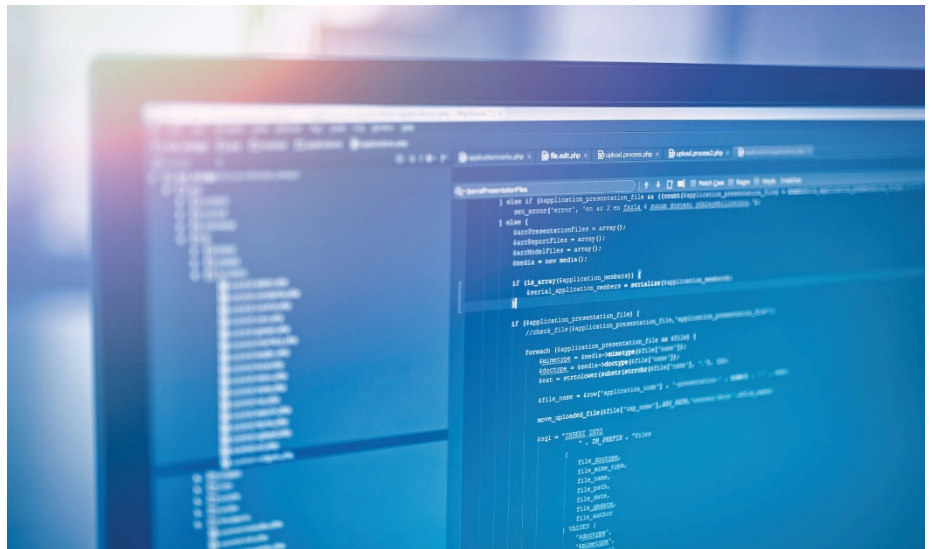


BRIEFING

THAILAND'S LICENSING REGIME FOR
DIGITAL ASSET BUSINESSES

NOVEMBER 2018

● DIGITAL ASSET BUSINESSES ARE REQUIRED TO OBTAIN A LICENCE FROM THE MINISTER OF FINANCE AND APPROVAL FROM THE SECURITIES AND EXCHANGE COMMISSION.



This is the second briefing in a four part series which also includes regulation of ICOs and digital token offerings in Thailand, 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"), requires digital asset businesses to obtain a licence from the Minister of Finance and approval from the Securities and Exchange Commission ("SEC"). This briefing explains the criteria for obtaining a licence and approval from the SEC.

Thailand's licensing regime for digital asset businesses

Digital asset businesses (including digital asset exchanges, brokers and dealers) are required to obtain a licence from the Minister of Finance and approval from the SEC.

An applicant (for exchange, dealer and broker licenses) is required to maintain paid-up registered capital as follows:

1. THB50m for an exchange;
2. THB25m for a broker;
3. THB10m for an exchange which does not have the assets of the customers in its possession, or cannot access or transfer the assets of the customers without consent from the customer on a case-by-case basis (e.g. if digital wallets are in the possession of a digital asset operator, but the digital asset

operator cannot manage or access such digital wallets without authorisation is granted by the customers);

4. THB5m for:
 - a dealer; and
 - a broker who cannot access or transfer the assets of the customers without consent from the customer on a case-by-case basis; and
5. THB1m for a broker who does not have the assets of the customers in his possession (e.g. where customers have their own digital wallets, which are not in the possession or under the control of the digital asset operator and payment for all transactions will be made directly by the customers without the involvement of a digital asset operator).

In order to obtain an exchange, dealer or broker licences for digital assets, a company must:

“DIGITAL ASSET BUSINESS OPERATORS ARE NOW CONSIDERED AS “FINANCIAL INSTITUTIONS” PURSUANT TO ANTI-MONEY LAUNDERING LAW.”

- be established under the laws of Thailand;
- have shareholder’s equity of at least THB50m for an exchange, THB25m for a broker, and THB5m for a dealer;
- be able to demonstrate that the applicant’s working systems are ready to operate the relevant digital asset;
- show there is no reason for the SEC to believe that the applicant has financial difficulties;
- have director(s) and executive(s) who do not have prohibited qualifications (as prescribed by the SEC); and
- be able to demonstrate that major shareholders (holding more than 10% of shares containing voting rights of the company) do not have prohibited qualifications (as prescribed by the SEC).

The application processing period of 150 days from the date of submission of complete documents takes into account the fact that the SEC must consider the application within 90 days from the submission of the required documents, followed by the Ministry of Finance being required to approve or reject the application within 60 days from the date it has received an application from the SEC.

Digital asset business operators are now considered as “financial institutions” pursuant to anti-money laundering law, which means that cryptocurrency exchanges, brokers and dealers will be subject to the Anti Money Laundering Office’s (“AMLO”) scrutiny and reporting requirements.

To date, six companies have applied for digital asset exchange licences and two companies have applied for digital asset dealer licences.

Concluding remarks

Thailand’s speedy attempt to formulate a clear framework for regulating trading and investments in cryptocurrencies and tokens should be welcomed, and digital asset businesses should be prudent to comply with the new regulations in applying for a licence and approval from the SEC.

FOR MORE INFORMATION

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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