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THAILAND Newsletter

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UPDATE: Thai SEC Officially Prohibits Licensed Digital Asset Operators from Facilitating the Use of Digital Assets as a Means of Payment

Introduction

In February 2022, we issued a legal briefing that discussed a proposed restriction on the use of digital assets as a means of payment for goods and services (to read that briefing, please follow this [LINK](#)). The Thai Securities and Exchange Commission (the "SEC") approved the new measures in early January. On 18 March 2022 the SEC issued a Notification of the Capital Market Supervisory Board on the "rules, conditions and procedures on provision of services of digital asset operators that must not have characteristics of supporting the use of digital assets as means of payment" (the "New SEC Regulation"). The New SEC Regulation came into effect on 1 April 2022.

Overview of the New SEC Regulation

From the New SEC Regulation's effective date, regulated digital asset business operators (including Digital Asset Exchanges, Digital Asset Brokers, Digital Asset Dealers, Digital Asset Fund Managers and Digital Asset Advisory Services) will be prohibited from undertaking the activities of operating and facilitating the use of digital assets (including cryptocurrency and digital tokens) as 'means of payment' for goods and services (details outlined below). Digital asset operators that currently engage in activities in violation of the New SEC Regulation must cease such activities before 30 April 2022.

The enactment of the New SEC Regulation requires a dramatic change in the relationship between digital asset business operators and their clients, and operators. Investors exploring operations in Thailand should be aware of how the New SEC Regulations may impact their business.

Key provision of the New SEC Regulation

Activities of operating and facilitating the use of digital assets as 'means of payment' for goods and services that are prohibited under the New SEC Regulation include:

- (1) advertisements, solicitation, or expressions of readiness to provide services to accept digital assets as means of payment for goods and services;
- (2) providing systems or tools that facilitate the use digital assets as means of payment for goods and services;
- (3) providing digital-asset wallet services for the use digital assets as means of payment for goods and services;
- (4) providing services of transferring Thai Baht from customers' accounts to account of others whether such account is derived from the sale of digital assets or comprised of Thai Baht that a customer deposited with a digital asset operator;
- (5) providing services of transferring digital assets from customers' account to the account of others that are not the customer's account for the use of digital assets as means of payment for goods and services; and
- (6) any other services having the characteristics of supporting the use of digital assets as means of payment for goods and services.

In addition, if a digital asset operator discovers that a client is using their digital asset accounts for payments of goods and services, the digital asset operator must notify that customer of the misuse and violation of the terms of service of that operator. If a client continues to violate the terms of service, the digital asset operator must take actions against such customer (e.g., temporarily suspend the services, cancel the service).

Conclusion

As a result of the enactment of the New SEC Regulation, the current arrangement between digital asset operators and merchants must be terminated before 30 April 2022. New arrangements will be prohibited. As such, current digital asset operators should ensure that they comply with the new prohibitions on the use of digital assets and review current business activities to prevent violations of the New SEC Regulation.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

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