

# **Summary of the Emergency Decree on Digital Asset Businesses B.E. 2561**

## **I. The Underlying Purpose of the Legislation**

Digital assets have been used as fund-raising instruments and medium of exchange, and are widely exchanged or traded on exchanges. Without laws and regulations in Thailand governing these activities, there are concerns that such activities can potentially affect national financial stability, economic system, and the general public. To address these concerns, the Emergency Decree on Digital Asset Businesses B.E. 2561 was enacted to regulate the offering of digital assets and businesses undertaking digital-asset-related activities. The goal is to encourage technological innovation that drives the economy and society towards sustainable development and to provide a variety of fund-raising instruments for competent businesses. Notably, the Emergency Decree also aims to protect investors by facilitating more precise and adequate disclosure of information for investment decision making, reducing risks of fraud and deception by dishonest persons, and preventing the exploitation of digital assets to support illegal transactions. In addition, other objectives of the Emergency Decree are to ensure that the purchase, sale, or exchange of digital assets are fair, transparent and accountable, and to establish mechanisms for maintaining the stability of the national financial system and macroeconomy.

## **II. Effective Date**

On 13 March 2018, the Cabinet has approved in principle the drafts of Emergency Decree on Digital Asset Businesses B.E. 2561 and Emergency Decree of the Amendment to the Revenue Code, which imposes levies on income derived from digital assets. Subsequently, on 27 March 2018, the Cabinet approved the final drafts of the two Emergency Decrees, which have been examined and endorsed by the Council of the State. The two Emergency Decrees were published in the Government Gazette on 13 May 2018, and became effective the following day.

### **III. The Essence of the Emergency Decree**

#### **A. Types of Digital Assets**

- **Digital assets** under the Emergency Decree includes Cryptocurrencies and Digital Tokens, with the following meanings:

- i) “Cryptocurrency” means an electronic data unit built on an electronic system or network which is created for the purpose of being a medium of exchange for the acquisition of goods, services, or other rights, including the exchange between digital assets.

- ii) “Digital Token” means an electronic data unit built on an electronic system or network for the purpose of specifying the right of a person to participate in an investment in any project or business, or to acquire specific goods, services, or other rights under an agreement between the issuer and the holder.

- iii) To enhance the effectiveness of supervision, the Securities and Exchange Commission (“the SEC”) is empowered to specify any other electronic data unit with a similar purpose to Cryptocurrencies or Digital Tokens, to be Cryptocurrencies or Digital Tokens respectively.

#### **B. The Offering of Newly Issued Digital Tokens to the Public**

- The public offering of newly issued or existing newly issued Digital Tokens, shall be conducted by the issuers which are legal entities established in the form of a limited company or public limited company. Prior to any offering, the issuers shall obtain approval from the Office of the Securities and Exchange Commission (“the SEC Office”), and the registration statement and draft prospectus shall be filed with the SEC Office.

- The public offering of approved Digital Tokens may only be carried out once the registration statement and draft prospectus have become effective. Notably, Digital Tokens may only be offered to investors of the types and conditions specified by the SEC, and offered through the ICO Portal<sup>1</sup> which has been approved by the SEC.

- After the completion of an offering, issuers of Digital Tokens have ongoing duties to disclose information to investors and the public. They are required to prepare and submit reports to the SEC Office with regard to their

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<sup>1</sup> Under the Emergency Decree, “**ICO Portal**” means an electronic system provider of the offering of newly issued digital tokens who shall screen the characteristics of digital tokens which will be offered, the qualification of issuers, the accuracy of registration statement and the draft prospectus, including any information disclosed through the ICO Portal.

financial condition, business operations or any other information which may affect the rights and interest of Digital Token holders, investment decision-making or the price or value of Digital Tokens.

- The SEC is empowered to exempt the offering of certain types of Digital Tokens from provisions of the Emergency Decree relating to the offering of Digital Tokens or from the duty of filing of the registration statement and the draft prospectus. The rationale is to not impose a burden on certain Digital Tokens which have minimal impact on the financial system or the general public. For instance, Digital Tokens are used in the ordinary course of trading goods or services, or are in the private placement,

### C. Digital Asset Businesses

- Digital asset businesses under the Emergency Decree are categorized into three types: (i) Digital Asset Exchange<sup>2</sup>; (ii) Digital Asset Broker<sup>3</sup>; and (iii) Digital Asset Dealer<sup>4</sup>. Those who intend to operate a digital asset business shall be approved by the Minister of Finance upon recommendation of the SEC.

- Digital asset businesses operating before the Emergency Decree became effective which intend to continue operations must file an application for approval within 90 days from the effective date of the Emergency Decree. Once the business has filed for approval, it can continue to operate digital asset businesses until the application is refused.

- To enhance the effectiveness of supervision in other types of digital asset businesses, the Minister of Finance upon recommendation of the SEC is empowered to specify other types of digital asset businesses to be regulated under the Emergency Decree.

- In undertaking digital asset businesses, the approved operators shall comply with the rules, conditions and procedures as specified in the

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<sup>2</sup> Under the Emergency Decree, “**Digital Asset Exchange**” means a center or a network established for the purposes of purchasing, selling or exchanging of digital assets, operates by matching or arranging the counterparty or providing the system or facilitating a person who is willing to purchase, sell or exchange of digital assets to be able to enter into an agreement or match the order, in the normal course of business, excluding the system or network in the manner as specified in the notification of the SEC.

<sup>3</sup> Under the Emergency Decree, “**Digital Asset Broker**” means a person who services or holds himself out to the public as available to be a broker or an agent for any person in the purchase, sale or exchange of digital assets to other person in the normal course of business, in consideration of a commission, fee or other remuneration, excluding the brokers or agents in the manner as specified in the notification of the SEC.

<sup>4</sup> Under the Emergency Decree, “**Digital Asset Dealer**” means a person who services or holds himself out to the public as available to purchase, sale or exchange of digital assets for his own account in the normal course of business outside the digital asset exchange, excluding the dealer in the manner as specified in the notification of the SEC.

notification of the SEC; for instance, having adequate sources of capital covering business operation and other several risks, having reliable operating systems and data security systems, maintaining records of assets belonging individual clients, segregating client assets from their own assets, and conducting Know Your Customer (KYC) and Customer Due Diligence (CDD).

- Where any digital asset business is in a situation where its financial condition or operation may cause damage to the public or is in violation of relevant regulations, the SEC is empowered to order such business to rectify the problem or to temporarily suspend the business operation wholly or partially. In addition, if the digital asset business still fails to comply or has repeated the violations, the Minister of Finance, upon recommendation of the SEC, is empowered to revoke business approval.

#### **D. The Prevention of the Exploitation of Digital Assets to Facilitate Illegal Transactions**

The Emergency Decree imposes that the issuers of Digital Tokens who are willing to accept Cryptocurrencies in the offering process or the operators of digital asset businesses who are willing to accept Cryptocurrencies from the counterparties in any transaction shall only accept Cryptocurrencies obtained from or deposited with operators of digital asset businesses regulated under the Emergency Decree. The rationale is to preserve the integrity of markets by ensuring that cryptocurrencies being transacted come from traceable sources. Additionally, the Emergency Decree imposes that digital asset businesses and ICO portals are considered “Financial Institution” under the Anti-Money Laundering Act, in order to prevent the exploitation of digital assets as a channel for money laundering.

#### **E. The Maintenance of Financial and Economic Stability**

Where transactions, business operations or other activities related to digital assets may significantly affect the stability of national financial system or economy, the Minister of Finance, upon approval of the Cabinet, is empowered to prohibit digital asset businesses from engaging in any particular digital-asset-related activity, or to suspend their operations wholly or partially.

#### **F. The Prevention of Unfair Trading Practices**

The Emergency Decree imposes offences of unfair trading in relation to the purchase, sale or exchange of digital assets taking place in a Digital Asset Exchange in a similar manner to the corresponding provisions in the Securities and Exchange Act, such as false dissemination, insider trading, front running

and market manipulation. This is to ensure that secondary markets for digital assets are fair, transparent and efficient, market integrity is preserved and investors are protected.

#### **G. The Powers of the Competent Officer**

The Emergency Decree enhances the investigative powers of the competent officer to be able to access computer systems, computer data, traffic data, or any device storing computer data of digital asset businesses or Digital Token issuers. The rationale is to modernize existing investigative powers of competent officers to be consistent with the nature of operations of digital asset businesses.

#### **H. The Authority under the Emergency Decree**

The Minister of Finance is in charge of the enforcement of the Emergency Decree and has the power to issue ministerial regulations and appoint competent officers to perform duties in accordance with the Emergency Decree.

#### **I. Sanctions**

The contravention or the failure to comply with the Emergency Decree is subjected to criminal provisions in which both the offences and the degree of penalties are comparable with those of the Securities and Exchange Act. For instance, the offering of Digital Tokens without approval, the operation of digital asset businesses without approval, the contravention or the failure to comply with the specified notifications of the SEC, the offences of unfair trading of digital assets, the offences toward competent officers, and the offences related to duties of director, manager, or person who is responsible for the operation of legal entity. Notably, the Emergency Decree also adopts the provisions for civil sanctions in order to enhance the effectiveness of enforcement.