



## Thai Regulation of Fintech Business

### -Basic regulations concerning payment systems & digital asset businesses

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#### Overview

Much like in the rest of the world, digital disruptions have pushed Thai entrepreneurs to develop various offerings involving Fintech: the combination of “finance “ and “technology” used to denote where the latter has been applied to the prior in the provision of enhanced banking or other financial services. For instance, Fintech may reference a new platform for, among others, internet banking through QR Code, an online market place (including a peer-to-peer lending platform), other matchmaking platforms (such as a digital exchange involving cryptocurrency and digital tokens) or the like.

Accordingly, Thailand has enacted several laws and regulations for certain types of money and finance businesses which may impact public interest, especially those involving e.g., electronic payment systems or digital assets. This Newsletter will draw your attention to the basic regulations and required licenses relating to these businesses, as well as the relevant government organizations overseeing such business for foreign investors.

<sup>1</sup> SCL Nishimura & Asahi (Through March 2021)

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## Basic regulation of payment systems

Internet banking or electronic payment may be the best examples of where Fintech has facilitated faster and more comfortable money transfer services for consumers. Indeed, there are many types of innovative electronic payment methods in existence, e.g., *electronic money* and platforms facilitating online use of traditional credit and debit cards.

The Royal Decree Regulating Electronic Payment Service Business, B.E. 2551 (2008) was issued on 17 August 2008 in order to maintain the stability of financial and commercial services, increase credibility and acceptance of electronic data systems, protect public interests, and enhance electronic payment usage. Subsequently, the Payment Systems Act, B.E. 2560 (2017; the “PSA”) was enacted on 16 October 2017 and fully enforced on 16 April 2018 to provide oversight and supervision of payment systems and services<sup>2</sup> and ensure alignment with international standards, enhancing efficiency and public security.<sup>3</sup> Consequently, from 16 April 2018 onwards all types of payment systems and services (including electronic payment systems and services) became subject to the PSA.

The Minister of Finance and the Bank of Thailand (the “BOT”) are the authorities who supervise business operators regulated under the PSA in three main business structures: Highly Important Payment Systems, Designated Payment Systems, and Designated Payment Services.

## Highly Important Payment Systems

Highly Important Payment Systems are those relating to principal infrastructure of the country, e.g., the inter-bank large value funds transfer system (BAHTNET) and the Imaged Cheque Clearing and Archive System (ICAS), and must be established and operated by the BOT. In addition, the Minister of Finance has the power to designate other payment systems as Highly Important Payment Systems. Since Highly Important Payment Systems must be established and operated by the BOT, private sector entities are not allowed to operate them (and as such will not be discussed in this Newsletter).

## Designated Payment Systems

Section 12 of the PSA prescribes the characteristics of Designated Payment Systems as follows:

- 1) payment systems which are the center or network between system users for handling funds transfer, clearing, or settlement, i.e., (1) inter-institution fund transfer systems, (2) payment card networks, and (3) settlement systems; or
- 2) any other payment systems which may affect public interest, public confidence, or stability and security of payment systems. Currently, the BOT has not specified other payment systems as Designated Payment Systems apart from types mentioned in 1) above.

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<sup>2</sup> According to the Bank of Thailand, a “payment system” refers to the process of delivery or transfer of payment for the purpose of settling financial obligations resulting from economic activities, while a “payment service” allows for the channeling of payments of any type of money, whether tangible or intangible, paying for goods or services, transferring such money, or making any other financial transaction. In short, payment systems support the means of payment and payment services are the gateways to such systems.

<sup>3</sup> For the avoidance of redundancy, the Royal Decree Regulating Electronic Payment Service Business, B.E. (2551) 2008 was revoked by the Royal Decree Regarding Cancellation of the Royal Decree Regulating Electronic Payment Service Business, B.E. 2551 (2008) B.E. 2561 (2018).

Business operators who intend to undertake Designated Payment System business shall obtain a Minister of Finance issued “Designated Payment System Business Licence”, which are allotted based on recommendation of the BOT prior to business commencement (Section 13 of the PSA).

According to the list of business operators on the BOT website, to date it has mostly been financial institutions, especially Thai commercial banks, that have obtained Designated Payment System Licences for their settlement systems. However, qualifying Designated Payment System business is not limited to financial institutions. Non-Banks, as mentioned in our December 2020 Newsletter, are able to operate Designated Payment Systems businesses.

The qualifications required of a Designated Payment System Business Licence applicant can be summarized as follows:<sup>4</sup>

	<b>Requirement</b>	<b>Qualification of Designated Payment Systems Business Licence Applicant</b>
1.	Status of applicant	<ul style="list-style-type: none"> <li>- A private or public limited company registered in Thailand having the objective to engage in providing Designated Payment System business; OR</li> <li>- A financial institution, a specialized financial institution, or a state enterprise.</li> </ul>
2.	Required paid-up capital as at the application filing date	<ul style="list-style-type: none"> <li>(1) <u>Inter-institution fund transfer systems</u> At least Baht 50 million.</li> <li>(2) <u>Payment card network</u> At least Baht 50 million.</li> <li>(3) <u>Settlement system</u> At least Baht 200 million.</li> </ul>
3.	Other requirements	<ul style="list-style-type: none"> <li>- Financial stability.</li> <li>- At least one director who has Thai nationality and resides in Thailand.</li> <li>- Must not have had its business operation (in part or whole) temporarily suspended nor have had any license or registration revoked according to the law governing payment systems.</li> <li>- Directors shall not have the prohibited characteristics specified by BOT regulations.</li> </ul>

Since applicants for the Designated Payment Systems Business Licence shall be in the form of a private or public limited company registered in Thailand and shall have at least one Thai director residing in Thailand, a foreign investor who would like to conduct any Designated Payment Systems Business in Thailand must first incorporate a company in Thailand in order for said company to apply for a licence. Additionally, if a company is regarded as “foreign” for the purposes of the Foreign Business Act, B.E. 2542 (1999) (the “FBA”), it must apply for and obtain a Foreign Business Licence (an “FBL”) under the FBA, as mentioned in our September 2020 Newsletter.

## **Designated Payment Services**

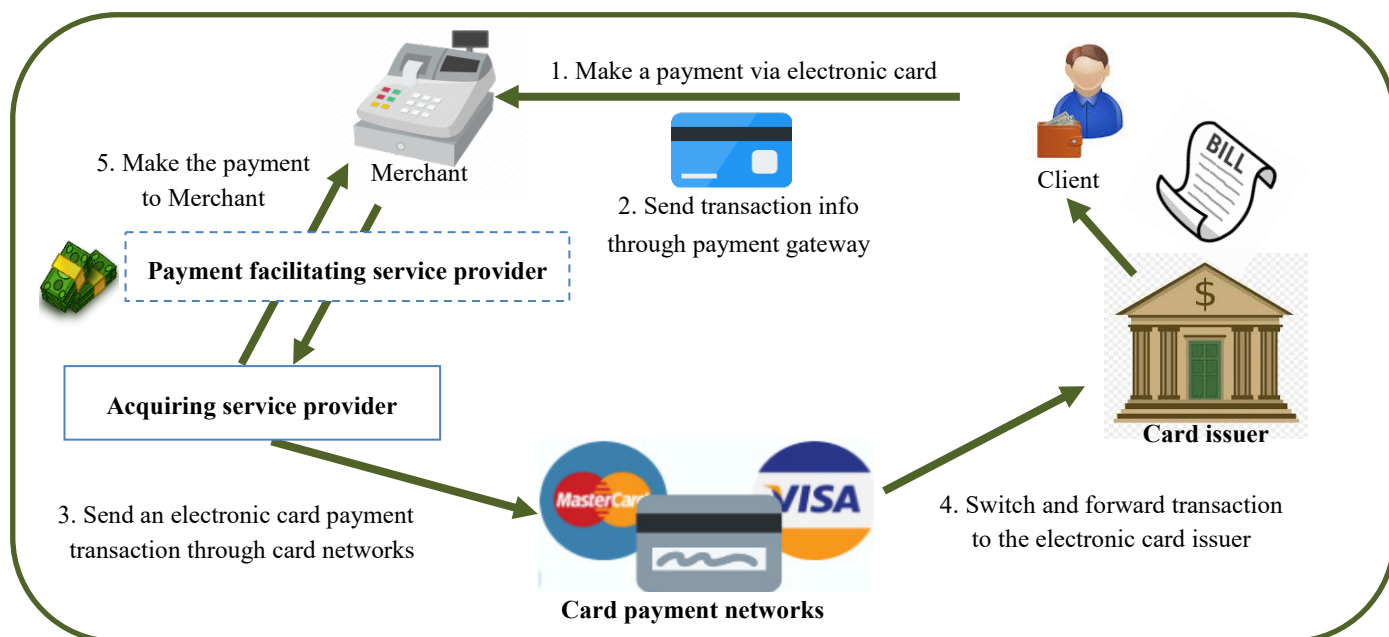
Section 16 of the PSA prescribes the characteristics of Designated Payment Services as follows:

- 1) Provision of credit card, debit card or ATM card service;
- 2) Provision of electronic money service;

<sup>4</sup> BOT Notification No. SorNorChor. 3/2561 Regarding Regulations, Procedures, and Conditions on Application for Licence to Undertake Designated Payment System Business.

- 3) Provision of the service of receiving electronic payment on behalf of product sellers, service providers or creditors (i.e. acquiring service,<sup>5</sup> payment facilitating service,<sup>6</sup> and service of receiving payment on (another’s) behalf;<sup>7</sup>
- 4) Provision of the service of transferring money by electronic means; and
- 5) Other payment services which may affect payment systems or public interests, e.g., provision of other electronic payment services involving technological innovation undergoing testing within the Bank of Thailand Regulatory Sandbox, making it subject to only BOT registration.

**Diagram 1: Role of Service Providers in electronic payments**



**Remarks:** Payment facilitating service providers collect electronic card payment transactions and send them to an acquiring service provider or another payment facilitating business provider (as the case may be), who then sends the details to a card payment network which will subsequently switch and forward it to the electronic card issuer. The card issuer will reimburse the acquiring service provider and it will pay the merchant directly or through a payment facilitator (as the case maybe).

<sup>5</sup> Article 1 of Notification of the Ministry of Finance Re: Stipulation on Designated Payment Services dated April 17, 2018 defines “acquiring service” as the “service of receiving payment via electronic card by sending or receiving an electronic card payment transaction to a payment card network which will subsequently switch and forward it to the electronic card issuer”. The acquiring service provider will make payment for the goods or services to the merchant, service provider, or other payment facilitator with whom they have entered a mutual service agreement regarding electronic card payment.

<sup>6</sup> Article 1 of Notification of the Ministry of Finance Re: Stipulation on Designated Payment Services dated April 17, 2018 defines “payment facilitating service” as the “service of receiving payment via electronic card by sending or receiving an electronic card payment transaction to an acquiring business provider or another payment facilitating business provider, as the case may be”. The payment facilitating business provider will make the payment for the goods or services to the merchant, service provider, or other payment facilitator with whom they have entered a mutual service agreement regarding electronic card payment.

<sup>7</sup> Article 1 of Notification of the Ministry of Finance Re: Stipulation on Designated Payment Services dated April 17, 2018 defines “service of receiving payment on behalf” as the “service of receiving electronic payment for and on behalf of a merchant, a service provider, or a creditor, who has a mutual service agreement appointing or assigning the business provider to receive payment for goods or services on its behalf”. For instance, Counter Service Co., Ltd., is a “service of receiving payment on (another’s) behalf” business operator in Thailand who serves as a gateway to receive various kinds of payments from customers on behalf of product sellers, service providers or creditors, e.g. water and electricity bills, utility bills, concert tickets, and insurance premiums. It marks up its service fee charged to customers who make the payment through the said gateway instead of making payment to product sellers, service providers or creditors directly.

Each of the Designated Payment Services businesses in Items 1) through 4) above require a specific licence (a “**Designated Payment Services Business Licence**”) from the Minister of Finance, which is issued based on recommendation of the BOT.

The qualifications an applicant for a Designated Payment Services Business Licence must fulfil are summarized as follows:<sup>8</sup>

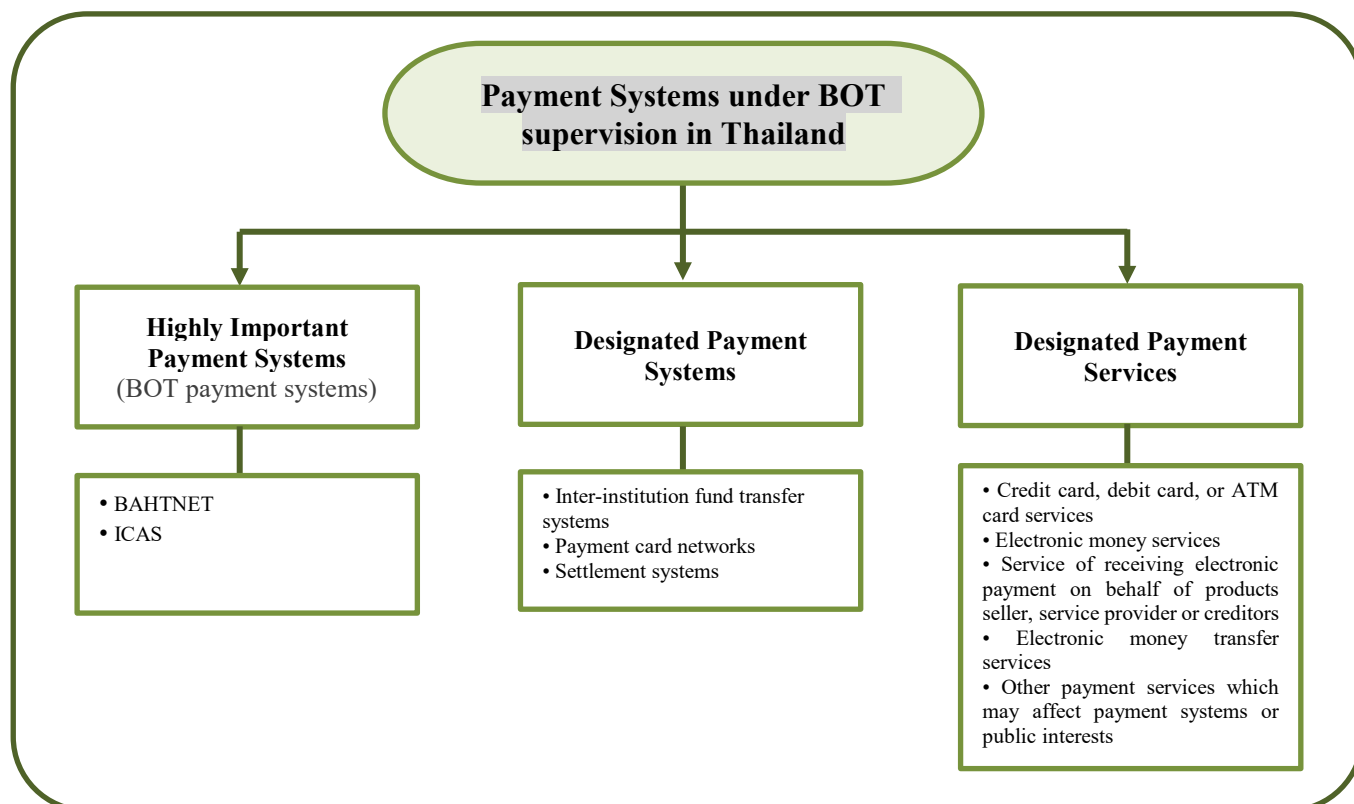
	Designated Payment Services Business	Major requirements		
		Status of applicant	Required paid-up capital as of application filing date	Other qualifications
1.	Credit card, debit card, or ATM card	- A private or public limited company registered in Thailand having the objective to undertake Designated Payment Services business; OR - A financial institution, a specialized financial institution or a state enterprise.	No specific requirement.	- Financial stability - At least one director who has Thai nationality and resides in Thailand Must not have had its business operation (in part or whole) temporarily suspended nor have had any license or registration revoked according to the law governing payment systems - directors shall not have the prohibited characteristics specified by BOT regulations
2.	Electronic money		- At least Baht 100 million.	
3.	Electronic payment receipt		- <u>Acquiring service</u> At least Baht 50 million. - <u>Payment facilitating service</u> At least Baht 10 million. - <u>Payment receiving service</u> At least Baht 10 million.	
4.	Transfer of money by electronic means		- At least Baht 10 million.	

Similar to Designated Payment Systems Business, if an applicant to the Designated Payment Services Business Licence is regarded as “foreign” for the purposes of the FBA, it shall apply for and obtain an FBL in accordance with the FBA.

Please note that even though the BOT Notification above does not specify the minimum capital for credit card, debit card, or ATM card services in Item 1, foreign companies are still required to comply with the minimum capital requirements for business operation in Thailand specified in the FBL application (i.e., required minimum capital of not less than Baht three million or 25 percent of the estimated three-year average expenses of the applied-for business, whichever is higher).

<sup>8</sup> BOT Notification No. SorNorChor. 5/2561 Regarding Regulations, Procedures, and Conditions on Application for Licence to Undertake Designated Payment Services Business.

Diagram 2: Overview of Payment Systems under BOT supervision in Thailand

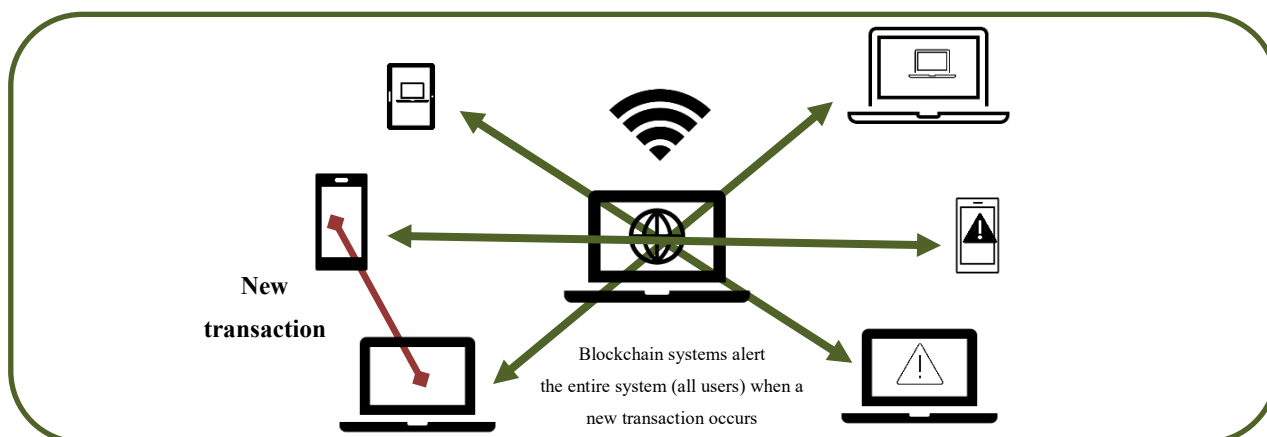


## Basic regulation of digital asset business

Digital asset business, debuting circa 2018, is the latest addition to the Fintech lineup in Thailand. In general, the digital asset exchange business has used blockchain technology to support digital asset transactions without a centralized trusted party.<sup>9</sup> Generally speaking, blockchain technology is a type of shared database record system through which information is retained and shared in a decentralized manner and wherein all users are alerted by the system when a transaction occurs.

<sup>9</sup> There is no specific definition of “blockchain technology” prescribed in any regulation.

Diagram 3: Digital Asset Business alerts via Blockchain



Since around 2018, digital assets have been publicly offered and business operators have created platforms for digital asset exchange activities in Thailand (similar to the global trend). Digital asset fund raising is limited to digital tokens in Thailand. The first public offering of digital tokens for investment purposes is called the Initial Coin Offering (“ICO”) which is similar to an Initial Public Offering (“IPO”) for securities. (To illustrate, JFin Coin, a utility token in the Jaymart group, conducted an ICO in Thailand in February 2018 for the purpose of developing its Decentralized Digital Lending Platform (DDL) for providing digital personal loans through mobile phones.<sup>10</sup>) However, digital assets are not regarded as securities under SEC regulations, as they are subject to a specific and separate law from that governing securities.

The Emergency Decree on Digital Asset Businesses, B.E. 2561 (2018) was enacted on 10 May 2018 in order to regulate digital asset exchange activities, as they may have wide-reaching impacts on the financial stability, national economy, and public interest. The authorities who supervise business operators to this end are the Minister of Finance and the Securities and Exchange Commission (the “SEC”).

The type of digital assets regulated under the Emergency Decree on Digital Asset Businesses, B.E. 2561 (2018) are cryptocurrency<sup>11</sup> and digital tokens<sup>12</sup> (according to Section 3 thereof).

The digital asset businesses supervised under this Emergency Decree are categorized as follows:

- (1) **digital asset exchange** (i.e. cryptocurrency exchange and digital token exchange) - a center or a network established for the purposes of trading or exchanging digital assets, which operates by matching orders or arranging for the counterparty, or providing the system or facilitating a person who wishes to trade or exchange digital assets, to be able to enter into an

<sup>10</sup> Due to the large volume of information regarding ICO, and the differences between ICO and IPO and associated regulations in Thailand, these matters will be described in our next series of Newsletters.

<sup>11</sup> According to Section 3 of the Emergency Decree, “cryptocurrency” means an electronic data unit created on an electronic system or network for the purpose of being used as a medium of exchange for the acquisition of goods, services or any other rights, or the exchange between digital assets, and shall include any other electronic data units as specified in a notification of the SEC.

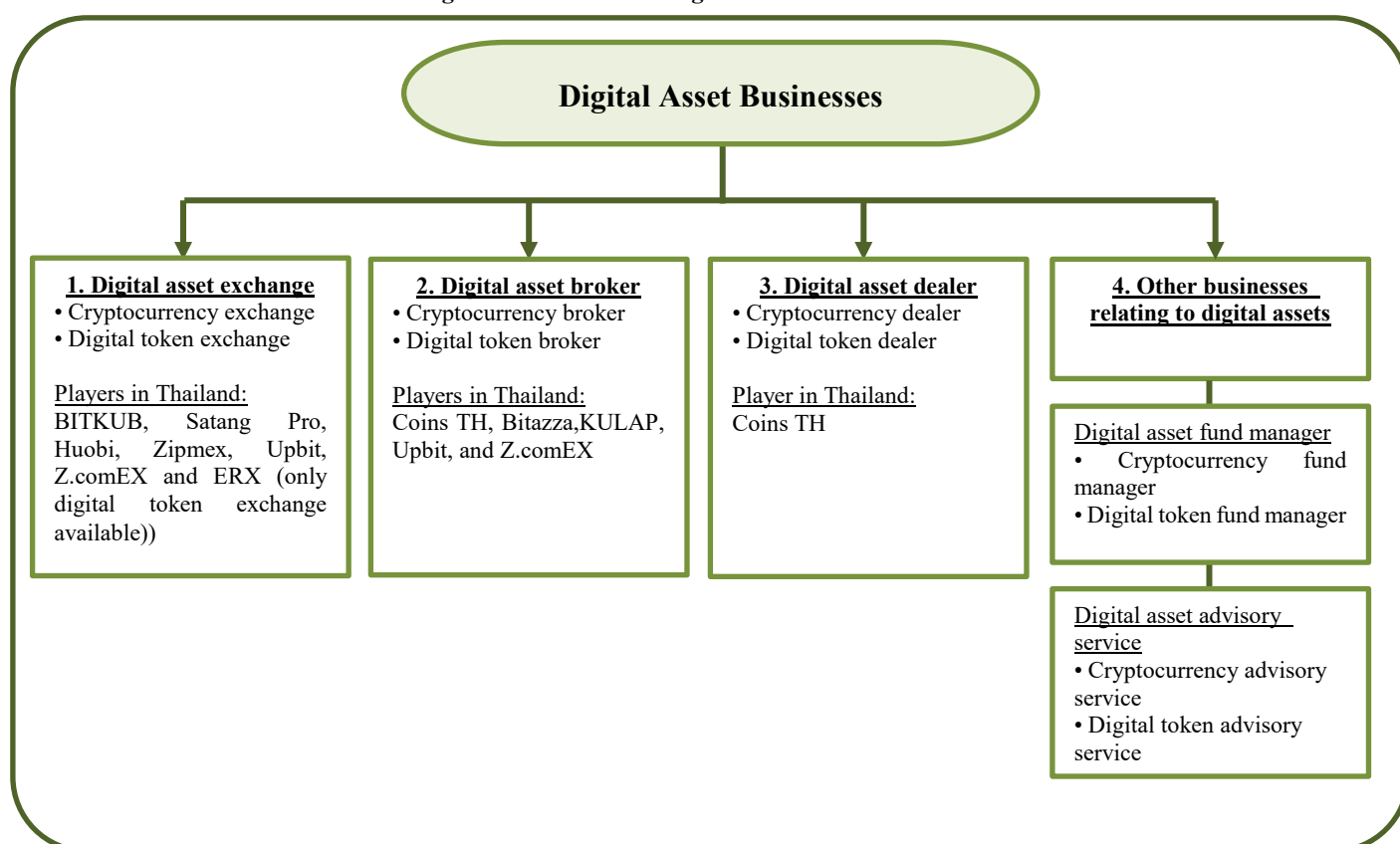
<sup>12</sup> According to Section 3 of the Emergency Decree, “digital token” means an electronic data unit created on an electronic system or network for the purpose of:

- (1) specifying the right of a person to participate in an investment in any project or business; and
- (2) specifying the right of a person to acquire specific goods, specific service, or any specific other right under an agreement between the issuer and the holder, and shall include any other electronic data units of right as specified in a notification of the SEC.

agreement or match the order in the normal course of business, excluding the center or network, in the manner specified in the notification of the SEC;

- (2) **digital asset broker** (i.e. cryptocurrency broker and digital token broker) - a person who provides services or holds themselves out to the public as available to provide services as a broker or an agent for any person with respect to the trading or exchange of digital assets in the normal course of business, in consideration of a fee or other remuneration, excluding the brokers or agents who act in the manner specified in the relevant SEC notification;
- (3) **digital asset dealer** (i.e. cryptocurrency dealer and digital token dealer) - a person who provides services or holds themselves out to the public as available to provide services with respect to the trading or exchange of digital assets for their own account in the normal course of business outside the digital asset exchange in (1) above, excluding the dealers who act in the manner specified in the relevant SEC notification; and
- (4) businesses relating to digital assets as prescribed by the Minister of Finance based on a recommendation of the SEC (i.e. digital asset advisory services and digital asset fund managers).<sup>13</sup>

**Diagram 4: Overview of digital asset business in Thailand**



Remark: holders of digital asset exchange licences are prohibited from applying for digital asset dealer licences, and vice versa, according to Clause 1 of the Notification of the Ministry of Finance Regarding Licensing of Digital Asset Businesses, B.E. 2561

<sup>13</sup> Clause 2 of the Notification of the Ministry of Finance Regarding Licensing of Digital Asset Businesses, B.E. 2561 (2018) has been amended by the Notification of the Ministry of Finance Regarding Licensing of Digital Asset Businesses No. 2, B.E. 2563 (2020) dated November 26, 2020 by adding 4 additional licenses in Items (7) to (10) as follows: “The applicant for license” means the applicant for one or more of the following digital asset business:

- (1) Cryptocurrency exchange license; (2) Digital token exchange license; (3) Cryptocurrency broker license; (4) Digital token broker license; (5) Cryptocurrency dealer license; (6) Digital token dealer license; (7) Cryptocurrency fund manager license; (8) Digital token fund manager license; (9) Cryptocurrency advisory service license; and (10) Digital token advisory service license.



(2018). Apart from the aforementioned exception, a business operator can apply for multiple licences regarding digital asset businesses, e.g. holding digital asset exchange and digital asset broker licences, and holding digital asset broker and digital asset dealer licences.

A business operator who would like to enter into the digital asset business in Thailand, as mentioned above, shall obtain from the Minister of Finance a specific type of business licence, which is issued based on a recommendation of the SEC.<sup>14</sup> The qualifications of applicants for a digital asset business license are summarized as follows:<sup>15</sup>

	Digital Asset Business	Major requirements		
		Status of applicant	Required paid up capital as at the application filing date	Other qualifications
1.	Digital asset exchange	Private or public limited company registered in Thailand	<ul style="list-style-type: none"> <li>- At least Baht 50 million (if the applicant will retain any client assets in its possession and be able to access them, or transfer client assets without client's consent for each transaction); or</li> <li>- At least Baht 10 million (if the applicant will not retain any client assets, or will retain them but it is unable to access, or will not transfer the client assets without the client's consent for each transaction)</li> </ul>	<ul style="list-style-type: none"> <li>- Financial stability</li> <li>- Well-prepared work system for operating digital business</li> <li>- Directors or executive officers shall not have the prohibited characteristics specified by SEC regulations</li> <li>- Major shareholder shall not have the prohibited characteristics specified by Notification of the Ministry of Finance</li> </ul>
2.	Digital asset broker		<ul style="list-style-type: none"> <li>- At least Baht 25 million (if the applicant will retain client assets in its possession and be able to access them, or transfer client assets without the client's consent for each transaction from time to time)</li> <li>- At least Baht 5 million (if the applicant will retain client assets but it is unable to access, or will not transfer client assets without client's consent for each transaction from time to time)</li> <li>- At least Baht 1 million (if the applicant will not retain any client assets in its possession)</li> </ul>	
3.	Digital asset dealer		<ul style="list-style-type: none"> <li>- At least Baht 5 million (as the digital asset dealer will trade digital assets under its own account, the SEC regulations prohibit it from retaining any client assets in its possession)</li> </ul> <p>Remark: If the digital asset dealer is also the digital asset broker, the SEC allows it to retain client assets (as the digital asset broker) but not access them, nor transfer client assets without client consent for each transaction from time to time)</p>	
4.	Digital asset fund manager		<ul style="list-style-type: none"> <li>- <u>If the clients include investors who are not institutional investors</u> OR the applicant will retain client assets in its possession: At least Baht 25 million</li> </ul>	

<sup>14</sup> Section 16 of Emergency Decree on Digital Asset Businesses B.E. 2561 (2018).

<sup>15</sup> Clause 3 of the Notification of the Ministry of Finance Regarding Licensing of Digital Asset Businesses B.E. 2561 (2018).

	Digital Asset Business	Major requirements		
		Status of applicant	Required paid up capital as at the application filing date	Other qualifications
			- <u>If the clients are limited to institutional investors</u> AND the applicant will not retain client assets in its possession: At least Baht 10 million	
5.	Digital asset advisory service		- At least Baht 1 million	

Although digital asset businesses are supervised by the SEC, those businesses shall not be regarded as securities businesses, etc., under the laws on securities and stock exchanges which shall be exempted from the foreign business licence requirement according to the Ministerial Regulation on Business Activities Exempted from Foreign Business Licence, B.E. 2556 (2013), as mentioned in our September 2020 Newsletter. Consequently, a foreign company engaging in digital asset business shall apply for and obtain an FBL in accordance with the FBA.

On a separate note concerning digital asset traders, the digital asset exchange in Thailand shall allow trade and/or exchange limited to any digital assets to be paired with Thai Baht or the following cryptocurrencies as prescribed in the SEC list:

1. Bitcoin (BTC);
2. Bitcoin Cash (BCH);
3. Ethereum (ETH);
4. Ethereum Classic (ETH);
5. Litecoin (LTC);
6. Ripple (XRP); and
7. Stellar (XLM).

Thus, the exchange of a cryptocurrency with any fiat currency other than Thai Baht, e.g., USD, JPY, EUR, SGD, MYR, etc., has yet to be deemed acceptable in Thailand. However, there are many digital tokens which may be traded and exchanged into Thai Baht, e.g. ALPHA, Curve Dao Token or CRV, Graph or GRT, Maker or MKR, and etc.

## Summary

Payment system and digital asset business operators are not restricted or limited by a foreign shareholder shareholding ratio. Thus, a foreign entrepreneur, who is interested in payment system business or digital asset business, may explore the Fintech market in Thailand (and, indeed, many do explore this exciting opportunity). However, such foreigner shall first incorporate a private or public limited company in Thailand to be in line with the qualifications of the BOT and/or SEC (as the case maybe). The specific licence from BOT and/or SEC must be granted prior to commencing businesses in Thailand. For payment system businesses, it is specifically required to appoint at least one director who has Thai nationality and resides in Thailand.

Apart from the specific BOT and/or SEC licence, a foreign business operator shall also be required to apply for an FBL for such business, since it is not exempted from the FBL requirement. In order to expedite the process, the foreign company may simultaneously apply for a Designate Payment Business Licence with the BOT and/or a licence relating to digital asset business with the SEC, and also apply for the FBL with the Department of Business Development.

Also worthy of note, the SEC initiated a call for public opinions, lasting from 25 February 2021 to 27 March 2021, regarding regulation of investors' qualifications to open digital asset trading accounts (e.g., age, trading experience, level of revenue or wealth, and port size, etc.) in order to minimise the risk of digital asset market fluctuation. The SEC summarised the information gathered during the public hearing and made a proposal on the qualifications of investors to the SEC Committee held on 1 April 2021. The SEC Committee approved such proposal in accordance with the SEC recommendation that investors should have experience trading cryptocurrencies or pass training or tests regarding cryptocurrency trading. In addition, the SEC Committee sanctioned SEC prescription of criteria for business operators to advise service users on fund investment, specifically on cryptocurrencies, in order to ensure that cryptocurrencies traders have sufficient knowledge and understanding of investment risk. Undoubtedly, the SEC will continue to develop criteria aligned with such SEC Committee resolutions. Thus, players in the digital asset market in Thailand should look out for criteria changes in the related SEC regulations in the near future and from time to time.



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