



## Legal Alert | Digital Asset

### Update on Public Hearing Re: The New Regulatory Scope on Digital Tokens in Thailand

In January 2023, Thailand's Securities and Exchange Commission (the "SEC") hosted several public hearings to gather feedback from the public on the proposed draft regulations for digital assets business operation in Thailand, including, among others, Public Hearing No. AorNorDor. 4/2566 on the regulatory scope of ready-to-use utility tokens, digital asset business operations and initial coin offerings ("ICO") in Thailand (the "Public Hearing") which was open for feedback from the public until 24 February 2023.

The SEC's Notification No. GorJor. 15/2561 Re: Public Offering of Digital Tokens (and its amendments) ("ICO Regulations") currently divides digital tokens into two categories:

(a) Utility Tokens, which are electronic units that are created on a digital system or network which the holder can exchange for goods or services or any other specific right as agreed upon by the issuer and holder; and

(b) Investment Tokens, which are electronic units that are created on a digital system or network which confer on the holder thereof the right to participate in an investment project or venture.

Under the ICO Regulations, the issuance and public offering of utility tokens not ready for use (i.e., a utility token of which the rights to the underlying goods or services are not available for the token holder to utilize on the offering date) and investment tokens ("Regulated Digital Tokens") are regulated and subject to the requirements specified thereunder prior to the public offering (the "Offering Requirements").

Subject to the above specifications of Regulated Digital Tokens, utility tokens can further be classified as "ready-to-use" or "not-

March 2023

### Get in touch

**Kongkoch Yongsavasdikul**  
Partner  
[kongkoch.y@kap.co.th](mailto:kongkoch.y@kap.co.th)

**Koraphot Jirachocksubsin**  
Senior associate  
[koraphot.j@kap.co.th](mailto:koraphot.j@kap.co.th)

**Teerachai Boonyaratgalin**  
Associate  
[teerachai.b@kap.co.th](mailto:teerachai.b@kap.co.th)

**Thamonwan Koozuwan**  
Associate  
[thamonwan.k@kap.co.th](mailto:thamonwan.k@kap.co.th)



### Kudun and Partners

23rd Floor, Unit C and F, Gaysorn  
Tower 127, Ratchadamri Road,  
Lumpini, Pathumwan  
Bangkok, 10330, Thailand  
[contact@kap.co.th](mailto:contact@kap.co.th)

ready-to-use” utility tokens, based on the SEC’s discretion and several other factors such as the availability of the underlying goods or services on the offering date, token characteristics and whether or not they are being offered for fundraising purposes.

The apparent lack of regulation of ready-to-use utility tokens has led to some ambiguity from a practical perspective as a number of digital tokens were issued based on the misunderstanding or claim that the issued digital tokens are not Regulated Digital Tokens. The SEC has therefore proposed changes to Thailand’s current laws regarding digital assets, particularly, the ICO Regulations and other SEC notifications. In order to ensure that the regulatory framework remains up-to-date and effective in protecting the rights of investors and stakeholders.

### Newly Proposed Changes to Regulatory Scope

According to the Public Hearing and the proposed draft notification amendments, the SEC has proposed several changes to be made to utility tokens, which can be summarized as follows:

#### 1. Group 1: Ready-To-Use Utility Tokens

According to the proposed amendments, ready-to-use utility tokens which the rights attached thereto are available to be utilized at the offering date, with one of the below issuance characteristics, are considered as “**Group 1 Utility Tokens**”:

- (i) issued for consumption purposes, for example, digital vouchers, digital gifts or points, tokens with the right to redeem concert tickets, loyalty points, and Non-Fungible Tokens (“**NFTs**”)<sup>1</sup>; or
- (ii) issued as a digital certificate or representation of rights, such as carbon credits, renewable energy certificates, digital transcripts, title deeds, medical certificates, and digital invoices.

Group 1 Utility Tokens must be non-financial products and be assigned a designated channel or a marketplace that has been provided for the exchange for goods, services, or specific rights, offered by either the issuer or its affiliates, and the value and price thereof must be in line with the market mechanism of the underlying

## About Us

### Digital Law Practice Group

Our digital law practice consists of some of the most prolific digital law savvy lawyers in Thailand, offering a broad range of legal advisory services and quality solutions to both local and international clients across a broad scope of legal matters for a wide range of TMT industries. We understand the challenges and rewards of staying innovative and profitable amid fast-paced change in the information technology and communications industry.

We can assist in multi-party platform formation and tokenization of assets, advising clients on initial decentralization exchange offerings for multi-chain platforms, on digital asset exchange token listings and on the tokenization and fractionalization of real-estate and other real-world assets as well as conducting due diligence for digital exchange listings, drafting white/lite papers, SAFT, and other digital exchange and cryptocurrency-related agreements.

---

<sup>1</sup> For NFTs to be categorized as Group 1 Utility Tokens they must be issued for collectibles purpose without offering the rights to goods or services, or other specific rights.

goods or services within such specific channel or market place.

For Group 1 Utility Tokens, all the following criteria must be fulfilled:

- (i) the goods, services, or other specific rights available for exchange shall be clearly specified in the filing documents in sufficient detail for investors to understand the specific characteristics of such goods, services, or specific rights offered to them or the details of the rights that they are entitled to receive from holding such digital tokens;
- (ii) the tokens shall not be available to use as a means of payment (“**MOP**”), medium of exchange, or be transferrable for payment of goods or services<sup>2</sup>;
- (iii) the token shall not be exchangeable for fiat money or electronic money (“**E-money**”) pursuant to the Payment Systems Act B.E. 2560 (2017) (the “**Payment Systems Act**”);
- (iv) the number of tokens required to be exchanged for goods or services, or specific rights shall be clearly specified in the filing documents; and
- (v) the redeemed or exchanged tokens shall not be able to be reused within the token’s ecosystem.

It must also be ensured that the staking function is not available in the ecosystem, except for staking for use in the mechanism of transaction verification, or for the token holder to be able to vote, participate, or be entitled to receive returns from a specific activity as proposed in the ecosystem.

According to the Public Hearing, Group 1 Utility Tokens are exempted from the Offering Requirements, which means that an issuer may issue the Group 1 Utility Tokens without first obtaining prior approval from the SEC.

---

<sup>2</sup> If the utility tokens have such characteristics of a MOP, they may be considered as “**money**”, which is currently under the supervision of the Bank of Thailand and under certain legislation such as the Currency Act B.E. 2501 (1958) (as amended) and the Payment System Act B.E. 2560 (2017).

## 2. Group 2: Other Ready-To-Use Utility Tokens (for those that are not included in the Group 1 Utility Tokens)

According to the Public Hearing, other ready-to-use utility tokens which are not included in Group 1 Utility Tokens above and have similar characteristics as a financial product are considered “**Group 2 Utility Tokens**”, for example, as follows:

- (i) tokens which grant the token holder the right to access the underlying products or services provided using distributed-ledger technology (“**DLT**”) or other systems;
- (ii) exchange tokens to be used to obtain discounts for trading fees or to promote membership levels;
- (iii) governance tokens which grant the token holder the right to vote on Decentralized Finance (DeFi), Centralized Finance (CeFi), or GameFi issues; or
- (iv) project tokens which provide digital assets-related services by way of CeFi;

Also, it must be ensured that the staking function is not available in the ecosystem, except for the same purposes as with the Group 1 Utility Tokens. In addition, it must also not be intended for use with or have any characteristics of MOPs; which, according to the proposed amendment, Group 2 Utility Tokens shall not be considered as MOPs if the issuance thereof is for:

- (i) use as a gas fee;
- (ii) use for cross-chain data transfer (oracle);
- (iii) transaction verification (Proof of Stake: POS);
- (iv) governance voting rights;
- (v) use in exchange for a trading fee discount in a CeFi project or on a digital asset exchange platform; or
- (vi) payment of goods or services in GameFi or Metaverse within a specific system and unable to exchange for goods or services outside the system.

Group 2 Utility Tokens are exempted from the Offering Requirements on the primary market. However, if the issuer wishes

to list the token on a secondary market, such offering shall be subject to the Offering Requirements and the SEC's prior approval.

### 3. Other Proposed Amendments

The proposed draft also aims to enhance the SEC's supervision of digital asset business operators in Thailand with the goal of improving investor protection, increasing transparency, and preventing unfair trading and other improper market practices by proposing to amend the listing rules, trading rules, and market surveillance in the secondary market. For example, it is proposed that a digital asset exchange cannot list or provide services relating to Group 1 Utility Tokens or Group 2 Utility Tokens for which there was no initial intention to list or provide any services on a secondary market; including tokens which offered the staking function but for which the source of returns to be paid to the token holder was unable to be identified.

For more information, please get in touch with [our digital law practice](#), or alternatively, please contact the authors.

All information, content, and materials contained in or referred to in this article do not, and are not intended to constitute, legal advice and are purely provided for general informational purposes only. For more information, please contact the authors.