Whitepaper on

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Issuance of Utility Tokens in Thailand

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Purpose of the Whitepaper

The purpose of this whitepaper is to assess and outline the regulatory framework applicable to the proposed issuance of utility tokens by the client of Tech Legal, with specific reference to the laws of Thailand. This Whitepaper examines the legal characterization of the proposed tokens, regulatory compliance obligations, licencing and registration requirements, cross-border implications, and associated risk considerations. The objective is to provide the readers with a clear understanding of the legal landscape governing utility-token issuance in this jurisdiction and to guide the reader in structuring its token offering in a manner compliant with relevant laws and regulatory expectations.

Scope and Limitations

This whitepaper is limited exclusively to the laws and regulations of Thailand and applicable AML/CFT legislation, including the Emergency Decree on Digital Asset Businesses, SEC rules, and related regulatory guidelines. Any change in law, regulatory interpretation, or administrative practice after the date of this whitepaper may affect the conclusions herein.

THAILAND's PIONEERING DIGITAL ASSET REGULATORY FRAMEWORK

Thailand was one of the first countries in the world to implement a clear, comprehensive regulatory framework for digital assets. The framework seeks to balance financial stability, investor protection, and technological innovation.

Legal Basis

The regulatory framework in Thailand for the issuance of utility tokens is primarily governed by Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) and the Securities and Exchange Commission (SEC).

BRIEF OVERVIEW

Classification and Regulation

The SEC differentiates between types of utility tokens based on their readiness for use as follows:

a. Not-Ready-to-Use Utility Tokens: These tokens have an underlying right to goods or services, but the right cannot be utilized immediately upon issuance. Issuance is generally subject to Initial Coin Offering (ICO) requirements, including obtaining prior SEC approval, filing a registration statement and prospectus, and offering the tokens through an SEC-approved ICO portal.

b. Ready-to-Use Utility Tokens: These tokens can be used immediately to acquire specific goods or services. The SEC recently amended its framework to bring these under supervision of 2 groups, namely:

   a. **Group 1 Utility Tokens** which are issued for consumptive purposes (e.g., loyalty points, digital tickets, in-game items, gas fees):

   - Regulation (Primary Market): Exempt from the ICO requirements and SEC approval for issuance.
   - Regulation (Secondary Market): Services related to these tokens are generally exempt from digital asset business licenses. However, licensed digital asset operators must establish a separate entity to provide these services if they wish to do so.

   b. **Group 2 Utility Tokens:** Other ready-to-use utility tokens not falling under Group 1 (e.g., native coins, governance tokens). These can be listed on a licensed digital asset exchange and must obtain SEC approval and follow ICO requirements.

KEY RESTRICTIONS AND REQUIREMENTS

Following are the restrictions and requirements.

a) Prohibition on Means of Payment (MOP): Issuers must generally not issue utility tokens to be used as a general means of payment.

b) Staking Restrictions: Issuers must not accept tokens for staking purposes, except for specific functions like a verification mechanism, voting, or joining events for sharing ecosystem benefits.

c) ICO Portal: For regulated offerings (like not-ready-to-use tokens and Group 2 tokens listed on an exchange), the offering must be conducted through an SEC-approved ICO portal, which performs due diligence, KYC, and CDD.

d) Disclosure: Issuers of regulated tokens must file a registration statement and draft prospectus with the SEC, and are subject to ongoing disclosure obligations.

e) The regulatory trend in Thailand is to enhance investor protection while accommodating innovation, ensuring that the rules are aligned with the characteristics and risks of each type of digital asset.

KEY REGULATORS

1) **Securities and Exchange Commission (SEC):** The primary regulator for the issuance and secondary trading of digital assets (cryptocurrencies and digital tokens). The SEC licenses and supervises Digital Asset Business Operators. It is the primary regulator and enforcement body for the capital markets and digital assets in Thailand. Its mission is to ensure the orderly development of the capital market, protect investors, and supervise the offering and trading of securities and digital assets (like the utility tokens you asked about). It is the SEC (Thailand) that issues the rules and provides approval for the issuance of regulated digital assets like ICOs and certain utility tokens. Thailand was one of the first countries in the world to implement a clear, comprehensive regulatory framework for digital assets. The framework seeks to balance financial stability, investor protection, and technological innovation. The foundation of the crypto regulatory framework in Thailand is the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018). Hereunder is a breakdown of the key aspects and supervising bodies.

2) **Ministry of Finance (MTOF):** Grants licenses for Digital Asset Businesses based on the SEC's recommendation.

3) **Bank of Thailand (BOT):** Oversees financial system stability and has publicly discouraged the use of digital assets as a general means of payment for goods and services to avoid risks to the financial system.

4) **Anti-Money Laundering Office (AMLO):** Enforces strict Anti-Money Laundering (AML) and Know-Your-Customer (KYC) requirements on all licensed operators.

DIGITAL ASSET CLASSIFICATION

The framework divides digital assets into three main categories, which determines their specific regulatory requirements:

Asset Type	Definition & Regulation
Cryptocurrency	A medium of exchange for acquiring goods / services, which is not an investment token or utility token. Trading must occur on a licensed exchange.
Digital Token	A right granted to the holder as an investor in a project (Investment Token) or a right to acquire specific goods or services (Utility Token).
Digital Asset	A collective term covering both Cryptocurrency and Digital Token.

Regulation of Digital Asset Businesses (DABs)

Any entity providing services related to digital assets must obtain a license from the MOF upon recommendation from the SEC. The main licensed categories include:

1. **Digital Asset Exchange (Crypto Exchange):** Platforms for trading digital assets.
2. **Digital Asset Broker:** An intermediary that executes trades for clients.
3. **Digital Asset Dealer:** Buys and sells digital assets for their own account to the public.
4. **ICO Portal:** An SEC-approved platform through which regulated Initial Coin Offerings (ICOs) must be conducted.

Key Licensing Requirements: These businesses face strict requirements, including minimum registered capital, local incorporation, robust IT and cybersecurity systems, and compliance with AML/KYC standards.

INITIAL COIN OFFERING (ICO) AND TOKEN ISSUANCE

Offerings

1) **Regulated Offerings**: Issuance of Investment Tokens and Not-Ready-to-Use Utility Tokens requires prior approval from the SEC and must be offered through a licensed ICO Portal.
2) **Exempt Offerings**: Ready-to-Use Utility Tokens (used immediately for specific goods/services and not categorized as an investment) are generally exempt from the full ICO regulations.

Restrictions and Prohibitions

1) **Means of Payment**: Digital assets are not legal tender and the BOT actively discourages their use as a general means of payment.
2) **Token Types**: The SEC has, at various times, prohibited the trading of certain tokens on licensed exchanges, such as meme tokens, fan tokens, and some Non-Fungible Tokens (NFTs), if they are deemed to lack clear substance or have insufficient investor protection mechanisms.
3) **Targeting Thai Users**: Offshore platforms that actively target Thai users are increasingly required to obtain a local license and comply with Thai regulations.

In summary, Thailand has adopted a "regulated gate" approach: buying, selling, and investing in crypto is legal, but all related business services (exchanges, brokers, ICO platforms) are strictly licensed and supervised by the SEC to ensure investor safety. The framework is complex because it divides utility tokens into different groups based on their readiness for use and their purpose, which dictates the level of regulatory scrutiny.

Key Distinction: Ready-to-Use vs. Not-Ready-to-Use

The most crucial factor is whether the utility token provides the holder with a right that can be exercised immediately upon issuance.

1) **ICO Portal:** The offering must be conducted through an SEC-approved ICO Portal, which vets the project, performs due diligence, and conducts KYC/AML checks on investors.

2) **Disclosure:** The issuer must file a Registration Statement and a Draft Prospectus with the SEC, detailing the project, the underlying utility, risk factors, and financial information.

3) **Retail Investor Limit:** Retail investors are subject to an investment limit of THB 300,000 (approx. $8,500 USD) per person per offering round.

General Prohibitions for all Utility Tokens

Regardless of the classification, all utility tokens must comply with strict prohibitions:

4) **No Means of Payment (MOP):** The token must not be intended or designed for use as a general means of payment for goods and services, as this is discouraged by the Bank of Thailand for financial stability reasons.

5) **Staking Restriction:** Issuers must not accept the tokens for staking purposes, except for specific, functional purposes like:

- Transaction verification mechanisms.
- Voting or participation in governance.
- Joining events for sharing benefits within the ecosystem.

In summary, the key step for any potential issuer is to classify their token correctly—if it involves fundraising for a future, unready utility, or if it is a complex utility token intended for listing on an exchange, the issuer must prepare for the lengthy and rigorous SEC approval process via an ICO Portal.

ADVANTAGES AND DISADVANTAGES

The advantages and disadvantages of issuing utility tokens in Thailand, considering the regulatory framework:

Feature	Advantages	Disadvantages
Regulatory Clarity	Established Legal Framework: Thailand has a dedicated law	Complexity for Issuers: The multi-tiered classification (Not-Ready-to-Use, Ready-

	(Digital Asset Businesses Decree) providing clear definitions and oversight, reducing legal uncertainty compared to some other jurisdictions.	to-Use Group 1, Group 2) can be complex to navigate, requiring expert legal guidance to determine the correct regulatory path.
Funding Potential	Access to Capital (for regulated ICOs): For Not-Ready-to-Use utility tokens, ICOs can be a powerful way to raise capital from a broad investor base, provided SEC approval is obtained.	High Barrier to Entry (for regulated ICOs): The process for regulated ICOs (Not-Ready-to-Use or Group 2 for listing) is rigorous, costly, and time-consuming, involving SEC approval, prospectus filing, and an ICO portal.
Innovation & Flexibility	"Fast Track" for Consumptive Tokens: The exemption for simple, ready-to-use consumptive tokens (Group 1) allows for innovative use cases (loyalty, gaming, ticketing) without heavy regulatory burden, fostering ecosystem development.	Limited Secondary Market for Exempt Tokens: Consumptive (Group 1) utility tokens are explicitly prohibited from being listed on licensed exchanges, limiting their liquidity and ability for holders to trade them easily. This can reduce their appeal as a transferable asset.
Investor Protection	Enhanced Investor Confidence (for regulated ICOs): SEC	Strict Restrictions on Use: Tokens cannot be used as a general means of payment.

	oversight, disclosure requirements, and the role of ICO Portals provide a level of investor protection that can build trust in regulated offerings.	This limits their potential as a universal currency within Thailand, forcing reliance on traditional fiat for broad transactional needs.
Market Access	Access to Thai Digital Asset Ecosystem: Regulated tokens can be listed on licensed Thai digital asset exchanges (subject to approval), providing access to a domestic market with clear rules and oversight.	Prohibition on Certain Token Types: Specific types of tokens (Meme, Fan, NFTs, and most exchange-issued tokens) are explicitly prohibited from being listed on licensed exchanges, limiting the scope of projects that can utilize these platforms.
Brand & Reputation	Regulatory Endorsement (for regulated ICOs): Passing SEC scrutiny can lend significant credibility and legitimacy to a project, attracting more serious investors and partners.	Ongoing Compliance Burden: Even after issuance, projects with regulated utility tokens face ongoing reporting and compliance obligations with the SEC, which requires dedicated resources and expertise.
Token Utility	Versatile Application: Utility tokens can serve diverse functions within an ecosystem, from accessing services and voting rights to in-platform currency,	Staking Restrictions: The SEC prohibits staking activities that resemble investment schemes, limiting certain common decentralized finance (DeFi) mechanisms that utility

	driving user engagement and ecosystem value.	tokens might otherwise employ for network security or reward distribution.

ICO TIMELINES (STANDARD PROCESS)

The timeline for a full, regulated ICO approval is substantial and typically takes 9 to 12 months or more, including the mandatory preparation phase.[1]

Phase	**Estimated Timeline**	**Key Activities & Requirements**
I. Preparation Phase	3 – 6 Months	Issuer Establishment: Must be a company established under Thai law with audited financial statements. ICO Portal Selection: Engaging and being vetted by an SEC-approved ICO Portal. Documentation: Preparing the Registration Statement and detailed Draft Prospectus (White Paper) in compliance with SEC rules, including checks and balances, governance, and conflict-of-interest measures. Legal Due Diligence: The ICO Portal conducts its own due diligence on the project.
II. Formal Application & Review	90 Days (Statutory Review Period)	Submission: Submitting the formal application, Registration Statement, and Draft Prospectus to the SEC through the ICO Portal. SEC Review: The SEC reviews the submission for completeness, compliance, and investor protection standards. Responses: Responding to multiple rounds of queries, clarification requests, and revisions from the SEC and the ICO Portal.

Phase	Estimated Timeline	Key Activities & Requirements
III. Offering Authorization		Approval: Once the SEC grants approval, the Registration Statement and Prospectus are deemed effective. Launch Window: The issuer generally has a limited window (historically six months, though "Shelf Filing Rules" may extend this for certain offerings) to conduct the token offering.

Fast-Track Option for Simple Tokens

The SEC has a special 15-day fast-track service for *qualifying* Ready-to-Use Utility Tokens (often Group 2 tokens) that have:

- "Plain-vanilla characteristics."
- An offering price corresponding to the value of the underlying goods/services.
- Fixed supply of goods/services (not varying with token price).
- No intention to be a means of payment.
- However, utilizing this route still requires compliance with core SEC requirements and is subject to the SEC's discretion on whether the token truly qualifies as "plain-vanilla."

Estimated Costs Involved

The total cost is a combination of mandatory government fees, a percentage fee, and significant professional advisory costs.[7]

Type of Cost	Details	Estimated Cost (THB)	Estimated Cost (USD)
SEC Application Fee	Non-refundable fee for the approval application.	THB 300,000	Approx. $8,700
Filing/Sub. Fee	Fee for the Registration Statement & Prospectus.	0.05% of the total value of digital tokens offered.	(Varies widely based on offering size)

Minimum Annual Fee	Ongoing supervisory fee paid to the SEC.	Minimum THB 10,000	Approx. $290
ICO Portal Fee	Due diligence, technology, and service fee charged by the approved ICO Portal.	Varies widely (Often a percentage of funds raised, e.g., 3-10%)	(Varies widely)
Professional Advisory	Legal counsel, financial advisors, auditors, and technical compliance consultants. This is often the largest expense.	THB Millions	$100,000+

Fast-track licensing for foreign securities businesses

- **Not directly for tokens**: The "fast-track" process is not for token issuance itself, but for foreign companies wanting to operate securities businesses in Thailand.
- **Qualifications**: To qualify, a company must have a Thai incorporated subsidiary and have at least five years of operation as a group, among other conditions.

  The SEC offers a fast-track (15 days) approval for qualifying ready-to-use utility tokens, which are those with plain-vanilla characteristics; with an offering price corresponding to the value of the underlying goods/services; for which the supply of goods and services does not vary with the price of the tokens (i.e., fixed coins); and which are not intended to be means of payment.

Key regulatory sources

- SEC Notification No. 15/2561 (3 July 2018) divides digital tokens into “investment tokens” and “utility tokens”.
- SEC Notification No. 10/2561 (7 June 2018) deals with utility tokens that are “ready-to-use”.

Key Regulatory Requirements for a Foreign SPV are as follows:

1. **Foreign Business Act (FBA) Restrictions**: A company is considered "Foreign" if 50% or more of its shares are held by non-Thai nationals or non-Thai entities (like an Indian citizen/company).
2. **Restricted Businesses (FBA Lists):** The FBA lists specific business activities that foreigners are either:

   List 1: Strictly prohibited from operating; or

   List 2 or 3: restricted and require a Foreign Business License (FBL) or a Foreign Business Certificate (FBC) to operate. Most service businesses fall under the broad List 3, Item 21 ("Other service businesses"), which generally requires an FBL.
3. **Obtaining a License**: To operate a restricted business, the SPV must successfully apply for an FBL from the Department of Business Development (DBD) or obtain a certificate through an exemption (e.g., through a Treaty of Amity or promotion by the Board of Investment).
4. **Nominee Arrangements**: The use of Thai nationals as "nominee shareholders" to circumvent the FBA's foreign ownership limits is strictly illegal and carries severe penalties for both the foreigner and the Thai national (fines and imprisonment).
5. **Minimum Capital Requirements**

   Foreign companies must meet specific registered capital thresholds, which must be remitted into Thailand:

- **General Minimum:**
  - For a business not restricted by the FBA: THB 2 million (Thai Baht).
  - For a business restricted under the FBA (requiring an FBL) or for each business activity: THB 3 million or 25% of the average estimated operating expenses for 3 years, whichever is higher.
- **Work Permit Requirement**: If the SPV plans to employ foreign staff (including the Indian director/owner), the general requirement for a work permit is typically THB 2 million in registered capital per foreign employee (though this can vary).
- Capital Remittance: The required minimum capital must be remitted from abroad into Thailand according to a set schedule, with evidence of remittance submitted to the DBD.

6. **Corporate & Governance Requirements**

The SPV will generally be registered as a Thai Private Limited Company, which requires:

- Shareholders: A minimum of two (2) shareholders are required for a private limited company (this was previously three, but was updated).
- Directors: At least one (1) director is required.
- Head Office: A physical address for the head office in Thailand is required.
- Tax Registration: Registration with the Revenue Department to obtain a Tax ID card.
- Accounting**:** Compliance with Thai accounting standards, including annual audited financial statements.

7. **Strategic Options for Foreign Investors**

To mitigate the FBA restrictions, an Indian investor may consider:

- **Board of Investment (BOI) Promotion:** If the business activity aligns with Thailand's development goals (e.g., high-tech, R&D), a BOI-promoted company can often receive 100% foreign ownership exemption from the FBA, along with tax incentives (like corporate income tax holidays).
- **Minority Stake:** Forming a joint venture where the Indian SPV holds less than 50% of the shares, legally classifying the company as Thai-owned (though this limits control).
- **U.S.-Thai Treaty of Amity:** While this treaty grants U.S. investors the right to 100% ownership in most sectors, India does not have a similar treaty with Thailand that provides a broad FBA exemption.

It is highly recommended to consult with a legal and corporate advisor in Thailand to properly structure the SPV based on its specific purpose (e.g., securitization, asset holding, project financing) to ensure full compliance.

8. **List 3** covers businesses in which Thai nationals are deemed *not yet ready to compete* with foreigners. Foreign-majority companies must obtain a Foreign Business License (FBL) from the Department of Business Development (DBD) to operate any of these businesses. This is the category under which your SPV would likely be classified under Item 21: Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation.

What this means for your SPV:

- Because the Issuance of Utility Tokens is a business activity that is not explicitly listed elsewhere in the FBA and not one of the services later exempted by Ministerial Regulation (such as certain loans/advice to affiliates), it is swept up by this "catch-all" clause.
- Consequently, your 100% Indian-owned SPV operating as a token issuer is considered a "Foreign" company engaged in a "List 3 Other Service Business" and must obtain the Foreign Business License (FBL).