



NAVIGATING THE FINTECH REVOLUTION IN THAILAND

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The Thai financial services sector remains heavily regulated and still subject to various licensing, registration, notification or approval requirements. These include: e-payment licenses, securities licenses, lending licenses, banking licenses, credit card business licenses, foreign exchange licenses, money transfer licenses and peer-to-peer lending platform and crowdfunding platform licenses.

In addition to the licensing/approval requirements, participants in the financial services sector are subject to regulatory compliance in terms of ensuring minimum IT security systems, data and consumer protection, anti-money laundering safeguards, exchange controls.

THAILAND'S FINTECH HORIZON

Thailand 4.0 is a much-publicized national policy that lays the foundations of the country's innovation and technology development strategy. In line with plans to create a 'digital economy', the Digital Economy Promotion Agency (DEPA) is tasked with steering digital transformation by engaging both public and private bodies alike.

The Thai Government continues to take active steps to ensure that Thailand remains an attractive destination for fintech participants through the use of regulatory and non-regulatory approaches. Regulatory support for fintech has continued to grow in Thailand, with several new pieces of legislation having been passed. Fintech development has seen four areas of growth: (1) Digital Payments (2) Insurance (3) Lending and Deposits and (4) Investment. We discuss Thailand's responses to date which aim to facilitate the growth of fintech in the country and encourage overseas investment into Thailand.

THAILAND'S FINTECH SANDBOXES

Thailand was among the first countries in the world to introduce regulatory sandboxes, three of which were under the auspices of Thailand's most prominent financial regulators, the Bank of Thailand ("**BOT**"), the Securities and Exchange Commission ("**SEC**") and the Office of Insurance Commission; with the fourth being initiated and supported by the Thai Fintech Association.

In keeping with the spirit of learning and adapting that should be the defining characteristics of any sandbox, the BOT issued a new set of guidelines in 2019 which repealed those issued in 2016 by developing on the lessons learnt and feedback received from the industry incumbents. Of particular note are the types of sandboxes that are permitted under the new rules, i.e. the traditional regulatory sandbox and what is commonly referred to as 'own sandbox' where the former supports trials of 'never before' seen innovations whereas the latter applies the testing of new iterations of existing financial services. 'Own sandboxes' are subject to periodic reporting to BOT as opposed to direct supervision in a regulatory sandbox.

Technologies being developed under the BOT sandbox include identification verification implementing the National Digital Identity ("**NDID**") for bank account opening, biometric recognition and the furtherance of the blockchain use case for letters of credit and international payments. QR code payments have matured beyond the phase of experimentation into what is now covered by the Standardized Thai QR Code for Payment Transaction Policy Guidelines.

Similarly, SEC regulatory sandboxes now cater specifically to the digitalization of securities and derivative businesses and their processes such as clearing houses, depositories and registrars and the continuous evolution of KYC procedures.

A natural corollary to the implementation of the NDID for bank account opening would be the launch and issuance of digital bank licenses.

Since the formal issuance of regulation relevant to mobile and internet banking in 2018, certain banking products and services of commercial banks were given autonomy in the sense that prior BOT approval was no longer a prerequisite. The planned launch of digital bank licenses edges closer to reality despite the cutthroat competition and natural disruption this would naturally entail. However, given that fintech is premised on financial inclusion and if Thailand is to keep pace with its regulatory peers in Singapore, South Korea, Japan, Hong Kong and China, the BOT would do well to take the lead in the market sooner rather than later.



The writing is on the wall with a large number of brick-and-mortar bank branches having been shut down and reliance on physical banking transactions being gradually phased out over the past decade. However, as identified by the outgoing BOT governor, Veerathai Santiprabhob, '3 key pillars are needed to build digital banks: data from non-financial sources, an electronic identification system, and a suitable regulatory framework', Thailand must establish an internationally comparable standard in this regard. On two fronts, i.e. personal data protection and NDID, matters appear to be pressing forward. For the third pillar, a regulatory framework could be the priority for the next BOT governor, especially in the context of sharply reduced physical banking transactions given the disruption being caused by the COVID-19 pandemic.

PEER-TO-PEER LENDING

2019 was an eventful year for the peer-to-peer ("P2P") lending platform industry with formal regulation by way of the much-awaited Notification 4/2562 Re: The Determination of Rules, Procedures, and Conditions for Peer-to-Peer Lending Businesses and Platforms, which came into effect on 30 April 2019. Among other notable requirements of the Notification, the P2P lending platform providers' participation in the BOT regulatory sandbox for up to a year is compulsory before the formal license application process can actually begin with the Ministry of Finance ("MOF") through the BOT; this would ensure proper risk management and consumer protection. As of date, the BOT has allowed three P2P lending platform providers to launch P2P lending between a limited number of users in its regulatory sandbox, i.e. DeepSparks Peer Lending Co., and more recently, Nestify Co. and Peer Power Platform Co.

The Notification defining a 'borrower' only as an individual has unfortunately left the playing field for platform-based corporate P2P lending noticeably unregulated. Whether this was a deliberate omission or a 'wait-and see' regulatory approach on the part of the MOF and BOT (given the industry's relative newcomer status) remains to be seen. It also remains to be determined as to whether platform-based corporate P2P lending will be regulated in the future.

CROWDFUNDING

2019 also saw crowdfunding activities being regulated in Thailand by the SEC pursuant to the SEC Notification Tor Jor. 21/2562 Re: The Offering of Securities for Sale through Crowdfunding Portals, thereby presenting fintech enabled fundraising for startups and SMEs at the grass roots level. Pursuant to the Notification, crowdfunding portals or platforms are defined as websites or mobile applications or other electronic media developed and deployed for the offer of securities, being crowdfunding shares and debentures.

In early 2020, we see a relaxation of rules in respect of 'debenture crowdfunding' whereby debenture issuers are no longer required to cancel their offering if they do not reach 100% of their target project values. An issuer can raise up to 80% of its fund goals and can disclose information to investors for pushing through with the offering. As compared to the previous 'all or nothing' rule, i.e. where issuers are required to fully meet the targeted fundraising amount failing which such projects are to be nullified, this updated policy is regarded by many as a good indicator that the SEC is embracing the realities of the current business environment.

Further validation by the SEC on crowdfunding exercise was also seen in February 2021, where SME debenture crowdfunding licenses were granted to both Siam Validus (a joint venture between foreign fintech firm Validus and Thai retail and distribution company SCG Distribution) and Funding Societies. Such step has provided Thai entrepreneurs and SMEs with an accessible and intelligent platform to access capital via debt crowdfunding, thus affording them with more confidence in their growth and contribution to Thailand's economy.

DIGITAL ASSETS

The evolving digital assets regulatory landscape was also seen in 2020 and 2021. In Thailand, digital assets comprise two classes of assets namely: cryptocurrency and digital tokens. A cryptocurrency can be deemed as a digital token in the case where the issuer intends to raise funds from the public, and if the cryptocurrency: (a) determines the right of an investor to invest in any particular project or business; or (b) determines the right to receive specific goods, services or any other right as agreed between parties.



The SEC periodically issues list of approved cryptocurrencies. As of June 2021, the recognized form of cryptocurrency in Thailand that an offeror of digital tokens or a digital asset business operator, can accept as consideration for transactions are Bitcoin (BTC), Ethereum (ETH), Riple (XRP) and Stellar (XLM).

Essentially, the Digital Asset Decree mainly governs two aspects of regulated activities: (1) offering of digital tokens to the public, commonly known as an initial coin offering (“**ICO**”); and (2) operation of digital asset businesses.

To offer the digital tokens to the public, the issuer must (1) have the specified qualifications; (2) obtain an approval from the SEC; and (3) file a registration statement for the offering of digital tokens and the draft prospectus to the SEC. Such offering must be done through the approved ICO portal.

The SEC also provides a private placement regime for the offering of digital tokens to certain groups of investors, i.e. offering to only qualified investors, or offering to only a limited amount of investors, or offering only up to a limited offering size within a specified timeframe, in which a deemed approval would be granted from the SEC and the offeror would thereby be exempted from filing a registration statement and prospectus with the SEC.

In 2021, the SEC has issued a set of new regulations governing digital token offerings that refer to, or for which the cash flow comes from, real estate, i.e. real-estate backed tokens. The key requirement remains that the amount or value of the investment in real estate must not be less than 80% of the project’s amount or value, or the aggregate value of the real estate to be invested must not be less than THB 500 million.

Generally, all digital asset business operators are subject to licensing and regulatory requirements. However, there are three specific scenarios where operators could be eligible for certain regulatory exemptions:

- Business operations by the BOT which could be considered as digital asset businesses, provided that the digital assets are issued and processed by the BOT.
- Business operations by an exchange, broker, or dealer offering digital token exchange services, provided that: (1) the exchange is done solely for the same types of digital token; and (2) such digital tokens are utility tokens (or other digital tokens that entitle the holder to receive the right from utility tokens), which the underlying products or services must be ready-to-use as of the date of the offering.
- Digital asset broker or dealer who provides sale or purchase services only for digital assets whose value has been pegged against the THB at a fixed exchange rate and has a clear mechanism to fix such value. The sale or purchase of digital assets must be done in exchange for THB at the specified set value, and any payments must be made through a financial institution recognized under the anti-money laundering law.

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