



The Legal 500 Country Comparative Guides

Thailand FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Thailand.

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THAILAND FINTECH



1. What are the sources of payments law in your jurisdiction?

In Thailand, each type of financial service, including payment services, may be subject to different regulations of Thai Law. The key regulation regulating Thai payment technology is the Payment System Act B.E. 2560 (2017) (the “**Payment System Act**”).

In 2017, the Thai government enacted and announced the Payment System Act in the Thai Government Gazette. The main intent of this legislation is regulate payment services and payment systems that are considered as “designated payment services” or “designated payment systems” or “highly important payment systems.” The payment systems and payment services that are regulated under the Payment System Act can be categorized into three types as follows:

- highly important payment systems – payment systems that are important to the security and stability of payment systems, financial systems, or monetary systems of the country,
- designated payment systems – systems or arrangements for the transfer of funds, clearing, or settlement which are required to obtain a license from the Minister of Finance or be registered with the Bank of Thailand (the “**BOT**”) (as the case may be) which include:
 1. payment systems which are networks between system users that handle fund transfers, clearing, or settlement, such as retail funds transfer systems, payment card networks, settlement systems, etc; or
 2. any other payment systems which may affect the public interest, public confidence, or stability and security of the payment systems,
- designated payment services – provisions of any payment instrument or any payment channel, whether tangible or intangible, for

payment of goods or services, or transfer of funds, or any other financial transaction which are required to obtain a license from the Minister of Finance or be registered with the BOT which include:

1. provision of credit cards, debit cards, or ATM card services;
2. provision of e-money services;
3. provision of accepting electronic payments for and on behalf of others;
4. provision of e-money transfer services; and
5. other payment services which may affect payment systems or the public interest.

In addition to the Payment System Act, the payment service providers may be subject to certain specific legislation such as the Anti-Money Laundering Act B.E. 2542 (1999) and Exchange Control Act B.E. 2485 (1942).

2. Can payment services be provided by non-banks, and if so on what conditions?

Payment services can be provided by non-banks. Even though most of the payment service providers are financial institutions, especially commercial banks, non-banks are also able to conduct and provide the payment service, having various products and facilities to provide financial services and systems. The legislation does not restrict non-banks from providing payment services. Currently, the number of new players which are non-banks who have entered into the payment and fintech market is increasing steadily.

The requirements for non-banks to be payment service providers are generally the same as commercial banks. Normally, the key regulation relating to the payment service is the Payment System Act, as mentioned in Question One above. If the payment service provided by a non-bank is considered a highly important payment system, designated payment system, or designated payment service, such non-bank carrying out the service

shall be required to obtain a license or register with the BOT, as the case may be. Key requirements for the applicant wishing to become a payment service provider under the Payment System Act include (i) being a limited company or public limited company that is registered in Thailand; (ii) having a paid-up capital of not less than Baht 100 million; and (iii) having a financial position and operating status which demonstrates its capability of undertaking the business and providing service with continuity, without any risks that may cause damage to service users, such as historical financial position and performance, shareholders' equity, source of funds and business operating plan for a three-year period, including details of estimated income, expenses, and investment budget.

3. What are the most popular payment methods and payment instruments in your jurisdiction?

In Thailand, due to the COVID-19 pandemic, e-payment has become one of the most popular payment methods. The BOT collaborated with worldwide card network service providers to develop the "Thai QR Code," which supports payments using debit cards, credit cards, e-wallets, and e-payments through bank accounts.

During COVID-19, the Thai government developed the "Pao Tang" e-wallet application to provide financial assistance to those who qualify for the program and to revive the Thai economy. Subsidies will be loaded to this e-wallet, which can be used as an intermediary for payment of goods with registered merchants, familiarizing Thai people with QR Code payment systems, and enhancing a new level of fintech adoption in Thailand.

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

As of now, there is no specific regulation which specifically supports an open banking system.

The BOT encourages all financial institutions to coordinate with each other to create the Application Programming Interface (API) and create the data mechanism and consent management. In 2022, the BOT, the Thai Bankers' Association, and the Government Financial Institutions Association established the

dStatement, which is a digital service of delivery and receipt of bank statements. Each financial institution can request and receive customer bank statements from the existing customer bank accounts for the purpose of providing a service or opening the account.

Apart from the above, currently, financial institutions coordinate with National Digital ID ("NDID") to facilitate customers in opening accounts online. The online opening of accounts may be categorized into three types as follows:

1. opening a new account when the customer has an existing account open with the bank. That customer may open a new account via mobile banking immediately;
2. opening a new account by using identification information from other banks in the NDID Platform. A customer may be verified and identified across the account banks through the digital platforms of the banks that the customer has opened an account with; and
3. opening a new account without information kept in the NDID Platform. In this case, the customer is required to identify themselves in accordance with each bank's criteria, which may be conducted through mobile banking applications.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

In Thailand, the Personal Data Protection Act B.E. 2562 (2019) (PDPA) is a comprehensive data protection law. The PDPA is similar to the GDPR in its concept of protection of personal data or sensitive data and in other key frameworks. Sensitive customer information requires consent from the customer before collecting and using such information, and the customer may revoke their consent at any time. As may be seen in other jurisdictions, the enactment of the PDPA has raised the requirements for financial service providers' marketing campaigns.

Financial service providers are required to prepare themselves and arrange their data collection and use, and set the procedure for collection and use of information from their customers.

6. What are regulators in your jurisdiction doing to encourage innovation in the

financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

The key regulators in Thailand which involve the fintech industry comprise of the (i) Ministry of Finance, (ii) BOT, (iii) Securities and Exchange Commission (SEC), and (iv) Office of Insurance Committee (OIC). These regulators have a duty to regulate and supervise financial products and financial service providers, and encourage the players in the market to create new innovations for each market.

Most of the new financial technologies that may impact the market broadly will be offered or instructed to be carried out in sandboxes. For example, a peer-to-peer lending platform business is required to participate in the BOT's regulatory sandbox until it completes a successful test.

The type of sandbox is normally categorized by the type of product and the supervisor. For instance, financial services are subject to the sandbox supervised by the BOT, securities are subject to the sandbox supervised by the SEC, and insurance is subject to the sandbox supervised by the OIC.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

We have not seen any imminent risk to the growth of the fintech market yet. However, we believe that certain issues that have occurred in other jurisdictions may occur in Thailand as well. For example, issues relating to risk exposure in IT security, digital crime, or money laundering. Common incidents in Thailand include online bank fraud which has caused concerns about the safety of digital banking among users. There have also been incidents where a few major banks were hacked, which may affect users' trust in keeping their wealth in a digital form.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

Thailand has numerous tax incentives that encourage fintech investment. In March 2022, the Thai cabinet approved income tax exemptions for investments in Thai start-ups, whether directly or indirectly, through individuals, companies, or through corporate venture capital (CVC). On 15 June 2022, the Royal Decree issued under the Revenue Code regarding Tax Exemption (No.

750) 2022 became effective regarding tax exemptions for income arising from capital gains. This benefit will be available until 30 June 2032. The tax incentive is applicable to investment in companies and PE trusts which are in the targeted industry.

According to the Royal Decree issued under the Revenue Code regarding Tax Exemption (No. 658) 2018, the income arising from investing in the targeted industries, namely new start-ups, shall be exempted from income tax or income related to business operations. The targeted industries also include "electronics, computers, software, and information services industries" and "research base industry development and innovation or new industry," which would include fintech.

In addition, the fintech industry is included as an investment type 5.9 (Digital Service) under the Investment Promotion Act B.E. 2520 (1977). An operator who operates a type 5.9 business shall be entitled to the following tax benefits:

1. Exempted from tax income for three years;
2. Exempted from import duty of machinery and equipment;
3. Exempted from import duty of imported goods for research; and
4. Exempted from the duty of material manufactured for exportation.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

Thailand is one of the fastest growing fintech markets in ASEAN, and given its high percentage of smart phone users, it has one of the world's largest consumer bases for fintech mobile banking. Business-to-Consumer fintech is an area which attracts investment from start-ups and financial institutions.

According to public information, during 2012 – 2021, most fintech investment is in Seed funding through Series A funding. However, after the COVID-19 pandemic, the 2021 investment in Series A funding increased approximately 48 percent from 2020.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

There are various advantages for choosing Thailand as a place to begin operations.

From a regulatory regime's perspective, Thailand's

government has provided a regulatory sandbox that has led to multiple advances in Fintech.

Even though cryptocurrency adoption lags behind other jurisdictions, the high adoption of QR payments by established banks provides a framework for smaller entrepreneurs to develop operations on top of the existing framework.

From a macro perspective, Thailand has a sizable population of approximately 70 million people with a medium level of average income, which makes it more attractive to certain business models.

Thailand also has a low cost of living, with sufficient digital infrastructure suitable for exploring new ventures at low cost. There is significant appetite for investment in the fintech space from a large number of corporate and individual investors.

11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

Currently, there are no specific immigration rules for the fintech industry. However, under the Investment Promotion Act B.E. 2520 (1977), foreign workers with expertise, investors, executives, and entrepreneurs within the targeted industry as specified under the law, including certain business types in the digital industry, are able to domicile and work in Thailand, along with their spouses and children. The condition and the period of permission depends on the discretion of the authority.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

Generally, foreigners working in Thailand are entitled to apply for the Non-Immigrant Visa "B", a single-entry visa with a three-month validity period to reside in Thailand for no less than 90 days. In late 2018, the Board of Investment of Thailand ("BOI") issued the notification prescribing the rules and regulations in relation to the specific type of visa for highly skilled professionals in the targeted industries, including the talent in the fintech

industry. Several privileges are granted to attract highly skilled foreigners e.g.: the 90-day report to immigration is extended to 1 year, no re-entry permit is required, 1-year maximum renewable period for a visa is extended to 4 years, no work permit is required for working, eligible for fast-track entry, and the spouse and children of the talent will also be granted permission to stay in Thailand without obtaining the work permit.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

There is no specific regulation protecting the products or innovations of fintech. Generally, innovation, goods, or services are protected under the Copyright Act B.E. 2537 (1994), Trademark Act B.E. 2534 (1991), and Patent Act B.E. 2522 (1979).

Thailand is a party to the Berne Convention and the WIPO Copyright Treaty, so foreign intellectual property rights may be protected in Thailand under these treaties. Further, Thailand is a party to the Patent Cooperation Treaty, and foreigners from a country that is also a party to the Patent Cooperation Treaty may file for a patent in their country of origin.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

Cryptocurrencies are recognised as a type of "digital asset" defined under the Decree on Digital Asset B.E. 2561 (2018), which are mainly supervised by the SEC. This law focuses on supervising digital asset business operators and protecting customers in the digital asset market in Thailand.

The law regulating digital asset markets (including cryptocurrencies, investment tokens and utility tokens) can be categorized into two markets:

1. Primary Market – the related business operators are initial coin offering (ICO) issuers and ICO portal service providers.
2. Secondary Market – the related business operators are exchanges, brokers, dealers, advisory services, digital asset fund managers, and custodial wallet providers.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any

change in this over the next 12-24 months?

The launch of an ICO in Thailand is subject to approval from the SEC. Only Thai-registered companies may apply for ICO approval, and are required to submit a draft whitepaper and prospectus along with other information. The ICO Issuer must offer digital tokens to the public via the ICO portal system and may also be subject to post-approval requirements. As of today, there are only two successful offerings, namely, SiriHub Token (a real estate-backed security investment token) and Destiny Token (a hybrid digital coin that is both an investment token and utility token). Approximately thirty potential offerings are still in the pre-consult process for the preparation of an ICO with the SEC.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

Most blockchain projects in Thailand are cryptocurrencies issued by digital asset exchange service providers such as KUB and OMG. Other than cryptocurrencies, Thailand has recently experimented with using blockchain as a payment system under the Inthanon project.

In addition to the fintech area, the Thai government plans to apply blockchain technology to other industries, such as patent registration and other intellectual property approvals, and the energy sector, which the Thai government has encouraged and supported business operators to use new technology. The Thai government has already opened a sandbox for the energy industry.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

In fintech, business artificial intelligence is used for many parts of commerce. One of the most common uses of artificial intelligence in fintech is the artificial intelligence advisor (Robo-Advisor).

The Notification of the Office of SEC No SorThor 31/2561 Re: Rules in Details on Wealth Advisory Service Business requires operators complete the process of client contact and services in five steps, as follows:

- exploring and understanding customers;
- constructing an investment portfolio;

- implementing the portfolio according to the asset allocation plan;
- monitoring and rebalancing the portfolio; and
- providing consolidated reports for clients' review.

These requirements may impede the further use of AI, as it may not yet be able to easily meet these requirements. A wealth advisor should also have an electronic system that can support the actions in the third and the fourth bullets.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

Insurtech in Thailand is normally used for facilitating and improving the insurers' efficiency. For example, the insurer may use the technology to check the condition of vehicles that are insured, or use the technology and data collected to compute insurance premiums.

Nowadays, insurtech is not as popular as e-payment, or other areas of fintech.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

Even though Thailand is not ranked highly, based on the Fintech E-Payment Readiness Index, compared with other fintech areas, e-payment is particularly strong in Thailand due to the push by financial institutions and government, and further tail winded by the Covid-19 situation and subsequent lockdown.

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

Most players in the Thai fintech market are large financial institutions. The financial institutions have pioneered and adopted financial technology to enhance their business and increase their market shares. Though fintech is disrupting traditional methods, such as payment, the financial institutions which have the information, funds, and connections still benefit the most from technology and can evolve their business accordingly.

There are certain areas that financial institutions coordinate with the new players, and players in other industries, in the Thai market in order to establish new fintech services such as digital banks, e-wallets, e-payment, and e-money; for example, a digital bank joint venture between Kasikorn Bank and LINE to establish LINE BK.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

Most of the fintech technology that banks and financial institutions utilize is e-wallet, e-money, and blockchain infrastructure, and due to the Thai government's encouragement, e-payment through each bank's application is widely used in Thailand.

A few banks, like Kasikorn Bank and Siam Commercial Bank, are very proactive and have set up technology-focused companies and invest heavily in various areas of innovation, including AI and digital assets.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

Changes in consumer behavior, related to means of payment, are strong examples of disruption through fintech in Thailand.

According to the Electronic Transaction Development Agency (ETDA), for online sales, bank applications and websites have the largest share as means of payment, which far exceeds the shares of e-wallet, credit card, or other online payment providers operated by non-banks. According to the statistics of the Bank of Thailand, in August 2022 alone, there were 1.2 billion transactions conducted by retail online funds transfer through banking applications and online banking websites. In recent years, we have also seen the number of physical branches and service points of banks decrease from 6,945 locations in December 2018 to 5,809 locations in September 2022.

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