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THAILAND

Newsletter

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Thailand: New Regulations on Debt-liked and Infra-backed ICOs

In Thailand, there are only few projects of initial coin offerings (ICOs) thus far. In an effort to promote the use of technology in fundraising while establishing, effective risk prevention mechanisms, addressing regulatory arbitrage (comparing with the securities offerings with similar characteristics), and ensuring adequate investor protection, while also promoting the use of technology in fundraising, the Securities and Exchange Commission (SEC) has recently published a set of new regulations on debt-liked and infra-backed ICOs. These regulations, effective from 16 November 2023, specifically target the ICOs with the following characteristics:

1. Debt-liked ICO

Debt-like digital tokens are offerings of digital tokens structured in the form of debts, similar to loans, with pre-determined interest rates and principal amounts. These tokens are characterized by a fixed return rate that remains unaffected by the performance of the underlying project, irrespective of the potential for extra returns that may vary based on other factors.

For the SEC to approve Debt-liked ICOs, issuers are required to demonstrate a reasonable and credible assessment of the project's reliability. This assessment must be conducted either by the ICO portal or independent experts. Moreover, there is a requirement for the public disclosure of this assessment, including the key factors considered, with a particular focus on risk evaluations related to the project's capacity for debt repayment of the principal amount (i.e., project redemption). The objective is to ensure that investors are provided with sufficient information to make informed investment decisions and to appropriately assess their potential return on investment.

2. Infra-backed ICO

Infra-backed ICOs mean the offerings of digital tokens that are backed by the revenue streams of infrastructure businesses as the underlying assets. This type of ICO enables investors to receive returns from the income generated by these infrastructure businesses.

Recognizing the similarities between an Infrastructure Investment Trust (Infrastructure Trust) and Infra-backed ICO, the SEC has revised its regulations to try aligning the standards for digital offerings within the context of ICOs with

those of Infrastructure Trust. These regulatory adjustments encompass the following matters:

- determining the characteristics of the underlying assets;
- establishing requirements for conducting due diligence and assets appraisal; and
- outlining the duties and operations of trustees in managing the issuer's assets, as well as other related obligations. The regulations require a passive trust approach, whereby the trust holds the infrastructure assets for the benefit of the digital token holders but refrains from engaging in active management or investment decision-making on these assets.

It remains to be seen how these new regulations will help spur the ICO boom in Thailand.

If you have any questions in relation to the topics raised in this briefing, please contact the authors in the left-hand column.

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