

Legal regulation of cryptocurrency and NFTs

Thailand





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Introduction

There is an increasing number of charities across the world that have started accepting cryptocurrency as donations, including **UNICEF** and the **Salvation Army**. New platforms like **The Giving Block** and **DoinGud** are helping nonprofits to raise funds with cryptocurrency and non-fungible tokens (“NFTs”).

To help charities better understand the opportunities and risks involved in working in this new context, PILnet with its partners launched a project about legal regulation of cryptocurrency and NFTs in different jurisdictions around the world.

The report below aims to consider:

- (a) The legality of cryptocurrency
- (b) Accepting cryptocurrency
- (c) Accepting NFTs and its proceeds
- (d) Issuing NFTs to raise funds

Disclaimer

PILnet, and partners participating in this research, are not liable toward third parties for the accuracy of the information contained in the research about Cryptocurrency and NFTs. The information contained herein is intended as a general overview and discussion of the subjects dealt with and only responds to the regulatory framework in effect during a specific research period in 2022-23. It is not intended to be, and should not be used as, legal advice or a substitute for taking legal advice in any specific situation.

Contents

Introduction.....	1
Contents	2
1. Is engaging in blockchain technology legal in this jurisdiction?.....	3
2. Is accepting cryptocurrency permitted for charities? If so, what legislation/regulation governs it?.....	3
3. Is issuing NFTs to raise funds permitted for charities? If so, what legislation/regulation (if any) governs it?	4
4. Are there tax implications for donations of cryptocurrency or NFTs? Are there obligations to pay tax for charities who sell NFTs for fundraising purposes?.....	5
5. What is the best practice or guidance?.....	6
6. Additional research findings worth noting.....	6

1. Is engaging in blockchain technology legal in this jurisdiction?



Although there is no specific law regarding general use of blockchain technology in Thailand, by considering the *Royal Decree on Digital Asset Business B.E. 2561* (“**Digital Asset Law**”), which basically regulates digital asset-related activities (including cryptocurrency and digital token), the use of blockchain technology appears to be legal in Thailand. The Digital Asset Law is the key legislation governing digital-asset-related activities, which were largely underpinned by blockchain technology.

Basically, the Digital Asset Law regulates (i) cryptocurrency and (ii) digital token (i.e., investment token and utility token). NFTs have not yet been spelled out in the Digital Asset Law. Hence, if the nature of NFTs fall within the definition of digital token, NFTs will be regulated by the Digital Asset Law.

While no specific law relating to the use of blockchain technology is put in place, the Bank of Thailand has issued its Guideline for Blockchain Technology Adoption in Financial Services in June 2021, which is applicable to financial institutions and non-banks under its supervision. This is aimed to ensure suitability, safety, and reliability of the blockchain technology used in financial service context.¹

Other relevant legislations that may indirectly involve the use of blockchain technology are e.g., the *Personal Data Protection Act B.E. 2562*, *Computer Crime Act B.E. 2007*, and *Emergency Decree on Technology Crime Prevention and Suppression Measures B.E. 2566*.

2. Is accepting cryptocurrency permitted for charities? If so, what legislation/regulation governs it?



The Digital Asset Law does not set out specific requirements in respect of charities’ acceptance of cryptocurrency/digital token. Therefore, to determine whether and to what extent a charity is permitted to accept cryptocurrency/digital token, one of key issues is to preliminarily consider type, legal status, and scope of powers, including activities permitted to be performed by such charity. For example, if a charity is registered as a foundation or an association under the Civil and Commercial Code of Thailand, the charity will be regarded as a juristic person under Thai laws, and be able to own assets and perform an act as authorized or permissible under its registered objectives/articles. The acceptance of cryptocurrency/digital token as part of fundraising must also be in compliance with the *Fund Raising Control Act B.E. 2487*.

Further to the above, as there is no specific restriction imposed on charities under the Digital Asset Law, whether the charity could open/manage its wallet or exchange accounts would also depend on requirements and protocols of each exchange account. The list of licensed operators under the Digital Asset Law is published in the official website of Thai Securities and Exchange Commission (“**Thai SEC**”).²

¹ See <https://www.bot.or.th/Thai/FIPCS/Documents/FOG/2564/ThaiPDF/25640101.pdf>.

² See <https://www.sec.or.th/digitalasset#list>.

A nonprofit organization is not subject to reporting obligations to the Anti-Money Laundering Office of Thailand (“AMLO”) in respect of monetary/digital asset-related transactions. However, if the nonprofit organization engages with a transaction reaching the threshold of a specified price or value or a transaction relating to digital assets, a commercial bank in Thailand or other non-bank operators may be required to report the AMLO on such transaction as required by the *Thai Anti-Money Laundering Act B.E. 2542*.

A nonprofit organization must also comply with its usual obligations to prepare the annual balance sheet accounts and to file an annual tax return. A charity registered as a foundation or association under the Civil and Commercial Code of Thailand is required to report the operations of the previous year (including the activities performed, balance sheets/accounts, and meeting minutes) to the authority on an annual basis.

3. Is issuing NFTs to raise funds permitted for charities? If so, what legislation/regulation (if any) governs it?

As mentioned above, currently, the Digital Asset Law does not specifically address legal requirements on NFTs but merely the digital assets, which cover cryptocurrency and digital token.

There are two types of digital token under the Digital Asset Law: (i) investment token (issued for specifying the right of a person to participate in an investment in any project or business), and (ii) utility token (issued for specifying the right of a person to acquire specific goods, a specific service, or any other specific rights under an agreement between the issuer and the holder). The cryptocurrency issued for the purpose of fundraising from the public, which has the feature as an investment token or utility token, will also be regarded as a digital token under the Digital Asset Law.

If the NFTs are not characterized as digital token (either investment token or utility token) under the Digital Asset Law, a person/entity will not be regulated under the Digital Asset Law in respect of the issuance or use of NFTs. However, in case NFTs are regarded as digital token under the Digital Asset Law due to their functions or features, an issuance of NFTs must comply with the Digital Asset Law. One of key requirements is that an issuer of the digital token must only be a private limited company or public limited company. Therefore, according to the current legal regime, if a charity is not established in the form of a company, the charity will not be allowed to issue the digital token.

The issuance of digital token generally requires a filing to be made to and an approval received from the Thai SEC. The issuance can be made as a public offering or private placement, depending on the nature of digital token. The Thai SEC has also published the list of cryptocurrency which the issuer of digital token can accept as consideration or as part of the transaction. According to the current list, there are four types of cryptocurrency, i.e., Bitcoin (BTC), Ethereum (ETH), Ripple (XRP), and Stellar (XLM). The report of post-offering is also required to be made to the Thai SEC with details and names of purchasers of the digital token, including the amount purchased.

4. Are there tax implications for donations of cryptocurrency or NFTs? Are there obligations to pay tax for charities who sell NFTs for fundraising purposes?

Recently (on 7 March 2023), the Thai cabinet approved in principle an exemption to income tax and VAT in respect of the sale of digital token. This exemption is aimed to benefit an issuer of digital token in a primary market and an investor trading the digital token in a secondary market. The approval was made on the basis that the tax exemption will have a retroactive effect since the effectiveness of the Digital Asset Law. The official enactment of the relevant regulations must be made for the effectiveness of the exemption.³

Thai tax law allows a taxpayer to include donations made during a tax year as deductible expenses for the tax return filings. One of key requirements is that to be entitled to the deductible expenses, a donee-entity must be an entity or organization as prescribed by the Thai Revenue Department (“**Thai RD**”), which are searchable at its official website.⁴ There is also the capped amount of total deduction for donations, which must not exceed 10% of taxable income after deducting expenses and allowances. The taxpayer may be requested to provide the Thai RD with documentary evidence of the donation in order to claim the expense deduction. Details on an issuance of receipts or documents for the donation received would also depend on the constitutions or internal documents of the donee-entity.

In general, if a taxpayer is an individual, the deduction of expenses by using the donation is limited only for donations in cash form. In case of an entity taxpayer, the donation to be included as deductible expenses may be in cash or asset form. The requirements on the eligible donation would also depend on the relevant regulations of the Thai RD.

In terms of the donee-entity (which is a foundation or association carrying out a business that gains revenue), the registration fees or maintenance fees from members, or cash or assets received as donation or gifts, are exempted from being included as income for tax purposes (see Section 65 bis (13) of the Thai tax code).

As the digital token, cryptocurrency, or NFTs having its own values could be interpreted as assets, such digital token, cryptocurrency, or NFTs might be regarded as deductible expenses or exempted from being assessable income as described above. However, there have been no regulations or tax rulings from the Thai RD in respect of these issues, including the valuation. We recommend further analysis and advice from a tax expert to be subsequently provided.

³ See <https://www.thaigov.go.th/news/contents/details/65833>.

⁴ See <https://www.rd.go.th/29157.html>.

5. What is the best practice or guidance?



The Thai SEC as the key supervisory authority of the Digital Asset Law has provided several platforms for public interests on the digital assets regulatory regime:

- Summary of simplified laws and regulations and the list of licensed operators, including news and information for decision-making of investors at its official website.⁵
- Guidelines on the digital assets and the Digital Asset Law at its official website.⁶
- Specific platform for sharing knowledge on investment in digital assets.⁷ The website also includes the online and offline channels to contact the Thai SEC for further information or complaints.

The Thai RD published the guidelines on personal income tax in respect of cryptocurrency and digital token at its official website.⁸

6. Additional research findings worth noting

Due to an attempt to harmonize the laws relating to nonprofit organizations and to clearly regulate activities and performances of nonprofit organizations in Thailand, the Bill Operations of Not-for-Profit Organizations Act (“**Bill**”) has been drafted and was open for public hearing in 2022.⁹

Key provisions under the latest version of the Bill are that a nonprofit organization must (i) declare its information including its sources of funds to the authority (and becoming publicly available); (ii) inform the authority upon receipt of a subsidy or donation from outside Thailand; and (iii) arrange accounts on incomes and expenses of each calendar year (and becoming publicly available) if its income is from a public donation or sources outside Thailand.

According to the Bill, there were controversial arguments on freedom deprivation and excessive interference from Thai authorities in certain cases. As the Bill is not yet finalized and is now under review of relevant authorities, this issue is recommended to be revisited once the Bill is legislated.

⁵ See <https://www.sec.or.th/digitalasset>.

⁶ See <https://www.sec.or.th/TH/Documents/DigitalAsset/DigitalAssetInvestment-Guide.pdf>.

⁷ See <https://www.smarttoinvest.com/pages/home.aspx>.

⁸ See

https://www.rd.go.th/fileadmin/user_upload/lorkhor/newsbanner/2022/03/Instructions_for_paying_personal_income_tax.pdf and https://www.rd.go.th/fileadmin/user_upload/lorkhor/information/manual_crypto_310165.pdf.

⁹ See

<https://ilaw.or.th/sites/default/files/%20%E0%B8%9E.%E0%B8%A3.%E0%B8%9A.%20%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%94%E0%B8%B3%E0%B9%80%E0%B8%99%E0%B8%B4%E0%B8%99%E0%B8%81%E0%B8%B4%E0%B8%88%E0%B8%81%E0%B8%A3%E0%B8%A3%E0%B8%A1%E0%B8%82%E0%B8%AD%E0%B8%87%E0%B8%AD%E0%B8%87%E0%B8%84%E0%B9%8C%E0%B8%81%E0%B8%A3%E0%B9%84%E0%B8%A1%E0%B9%88%E0%B9%81%E0%B8%AA%E0%B8%A7%E0%B8%87%E0%B8%AB%E0%B8%B2%E0%B8%81%E0%B8%B3%E0%B9%84%E0%B8%A3%20%E0%B8%9E.%E0%B8%A8.%20.....pdf>.

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