ASIAN LEGAL BUSINESS
MAY 2021 / ASIA EDITION

ASIA
IP
RANKINGS
2021

THE BEST FIRMS FOR PATENTS, TRADEMARKS & COPYRIGHT

OFFSHORE LAWYERS AS PICKED BY LAWYERS

THAILAND’S CRYPTO BOOM BRINGS NEED FOR CLARITY

NEW SCHEME CONNECTS WEALTH IN THE GBA

INSIDE THE INAUGURAL MIDDLE EAST LAW AWARDS
WANTED: CRYPTO CLARITY

Thailand’s digital assets industry has been booming in recent months. According to the country’s SEC, cryptocurrency trading accounts have rocketed from 160,000 at the end of 2020 to 470,000 by the start of February. In March, the Bank of Thailand (BOT) issued policy guidelines on how stablecoins are to be regulated, but these still leave many areas of ambiguity for lawyers and businesses in the market. **BY ELIZABETH BEATTIE**

The year 2021 has seen Thailand’s cryptocurrency landscape really take off. As the price of bitcoin skyrocketed this year, new and experienced investors flocked to exchanges to cash in on the latest market upswing. The results have been mixed, with some collapsing unexpectedly, while others have drawn the ire of regulators. But what’s clear is that a massive number of new traders has entered the space.

As a result of the sudden surge, the authorities have been looking to regulate the space. In March, the Bank of Thailand (BOT) issued policy guidelines on how stablecoins are to be regulated, while the SEC also published proposed draft requirements for cryptocurrency investors qualifications, say Wongsakrit Khajangson, partner, and Panupan Udomsuvannakul, counsel, at Chandler MHM.

“These requirements would require crypto traders to have financial knowledge and an annual income of at least THB 1 million or net asset value worth at least THB 10 million. The draft was published for public hearing purposes and faced controversial feedback from the public,” Wongsakrit and Panupan say.

“Even though the draft has now been withdrawn, these types of regulations may be considered as specific potential legal risks for Thai crypto traders in addition to those risks which are inherent to the decentralised nature of the cryptocurrency,” the lawyers add.

The current legal regime includes mechanics for screening digital assets and information disclosure to support the decision-making of investors, say Wongsakrit and Panupan, while also including capital reserve requirements of the digital asset business operators and the segregation of their assets.

“Therefore, we believe the regulators have already gained the confidence of traders that they are adequately protected in relation to Thai crypto related business operators. Nevertheless, continued issuance of regulations and clarifications to further clarify the application of the regulations to new types of blockchain assets on an ongoing basis would further increase the confidence of traders,” Wongsakrit and Panupan add, noting that another means to increase the confidence of traders is to conduct frequent public consultations and ensure that their opinions are taken into account.

**NOT COMPREHENSIVE**

But the guidelines issues by the BOT are not comprehensive as they only state the Bank of Thailand’s view at a high level, Wongsakrit and Panupan say.

According to the guidelines, the BOT states that Thai Baht-backed stablecoins may be considered electronic money (e-Money) under the 2017 Payment Systems Act which are regulated by the BOT. But the bank encourages operators who are interested in launching Thai Baht-backed stablecoins to consult with the BOT before launching the coins, the lawyers say.

When it comes to other types of stablecoins, such as stablecoins backed by foreign currency or assets, and algorithmic stablecoins, “the BOT would arrange a hearing before considering how to regulate these types of stablecoins,” Wongsakrit and Panupan say, noting that the regulatory position of the BOT is similar to that of other countries, but the market and investors are still waiting for clearer regulations of stablecoins to be issued.

But more detailed regulations are expected to emerge around cryptocurrency trading in the market soon.
PDPA in Thailand enforceable from 1 June 2021

Thailand’s first data privacy law, the Personal Data Protection Act B.E. 2562 (2019) (“PDPA”) has been temporarily postponed until 31 May 2021. Assuming that there is no further postponement, the PDPA will become largely enforceable on 1 June 2021. However, to date, the necessary supplementary regulations have not been issued, therefore rendering some parts of the PDPA incomplete and subsequently unenforceable. In February of 2021, the Ministry of Digital Economy and Society, the Office of Personal Data Protection Commission, and Chulalongkorn University jointly arranged unofficial public hearing sessions for Group 1 of the subordinate laws. This was to discuss the regulations urgently required to clarify certain details of the PDPA to enable businesses to understand and comply with the PDPA. The hearings were divided into seven sessions according to the type of industry. Academics from Chulalongkorn University presented on the concepts of the draft regulations and responded to questions raised by the participants. The supplementary regulations under this Group 1 are:

- Rules and procedure for obtaining consent from data subjects;
- Appropriate measures for the processing of sensitive data;
- Notification of the purposes for and details of the processing of personal data;
- Rules and protective policy for the transfer of personal data from Thailand to overseas;
- Preparation of records for the processing of personal data, appropriate measures on the right to access the personal data of data subjects, and data breach notification;
- Security measures for the processing of personal data;
- In relation to an appointment of data protection officer, the criteria regarding the controller or amount of data processed; and
- Complaint and administrative procedures.

During the hearing drafts of the supplementary regulations were not presented, only guidelines and frameworks indicating how each may look. Given the current status of the supplementary regulations and necessary process, it is unlikely that these supplementary regulations will be issued on or before 1 June 2021. It is important to be aware that even without the supplementary regulations, the PDPA itself is materially enforceable and companies must take the necessary measures to comply with these already-functional provisions before they become effective on 1 June 2021.

“Due to the vigilance of the regulators on decentralised digital currencies, the regulators seek to keep the market adequately regulated while following international norms. We expect to see more regulations which aim to protect investors and prevent money laundering and fraud,” they add.

The regulations show that there is a push to promote use of distributed ledgers or blockchain technology.

“For instance, from the Securities and Exchange Commission (SEC), we may see further requirements on investors qualifications, regulations on the digital asset wallet providers, or some regulations aimed at overseas providers given the cross-border nature of the industry. This is because a wallet provider is not regulated nor licensed by the SEC,” say Wongsakrit and Panupan, noting that many digital asset operators are using wallet services from foreign providers that are not within the Thai jurisdiction.

“The new regulation might aim to regulate this type of business as a sub-category of digital asset business and to impose on a wallet provider, which stores the digital assets of the customers, the same duties as that of some other digital assets business operators. We may expect to see from the BOT clearer and more comprehensive regulations on stablecoins in the near future. We may also expect to see regulations on the Retail Central Bank Digital Currency (CBDC), which is a digital currency to be issued by the BOT as an alternative to Thai Baht, from 2022 onwards,” they say.

Among the other new source of potential development is around the increasing interest in non-fungible tokens (NFTs) in Thailand, and in Asia more broadly. While currently, there aren’t specific regulations on NFTs in the market, “Generally, these should be legally possible in Thailand”.

“Nevertheless, we do expect NFTs of Thai creators to be launched on international renowned platforms rather than the domestics ones for the time being,” they add.

Those who take a step back will find that Thailand’s policy approach to digital assets generally falls in line with those of its neighbours — Singapore and Malaysia.

“The cryptocurrency business operators are subject to licensing requirements and the public offering of cryptocurrency is subject to prospectus requirements, limitation on types of investors and requirement on approval of platform, ongoing information disclosure and reporting requirements,” Wongsakrit and Panupan explain.

But the country could also benefit from greater collaboration that extends beyond borders.

“Given the borderless natures of these blockchain-based assets, personally we would hope to see an increase in international coordination. As for Thailand, Thai regulators have been very active and therefore we look forward to fast evolving, well-balanced regulatory regimes in these areas,” the lawyers say. ☑