

Cryptocurrencies & ICOs

Opportunities and Challenges

Cryptocurrencies
and ICOs

Digital Asset
Businesses

Legal
Aspect

Regulated
Activities

Issues for
consideration

Securities
Companies

**Baker
McKenzie.**



Cryptocurrencies

ICOs

**Baker
McKenzie.**

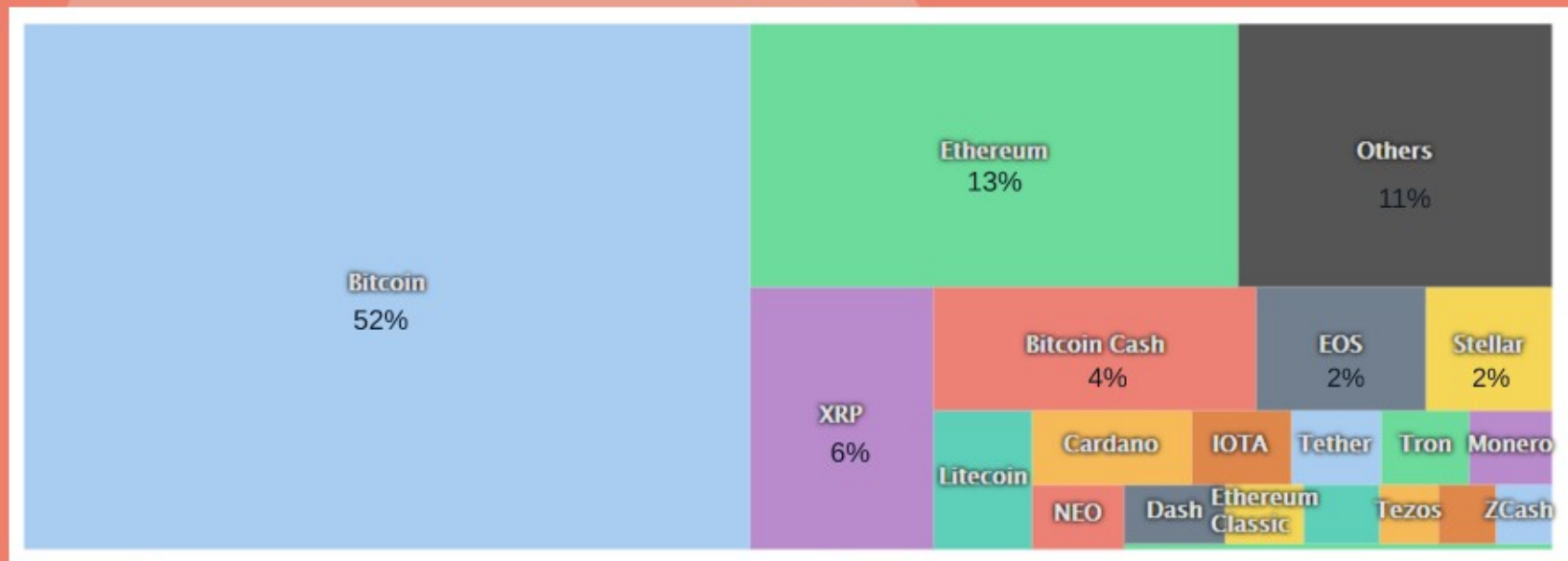
Digital Currencies



**Baker
McKenzie.**

Available cryptocurrencies in the market

Top 20 cryptocurrencies by market cap (as of August 2018)



<https://coinlib.io/global-crypto-charts>

**Baker
McKenzie.**

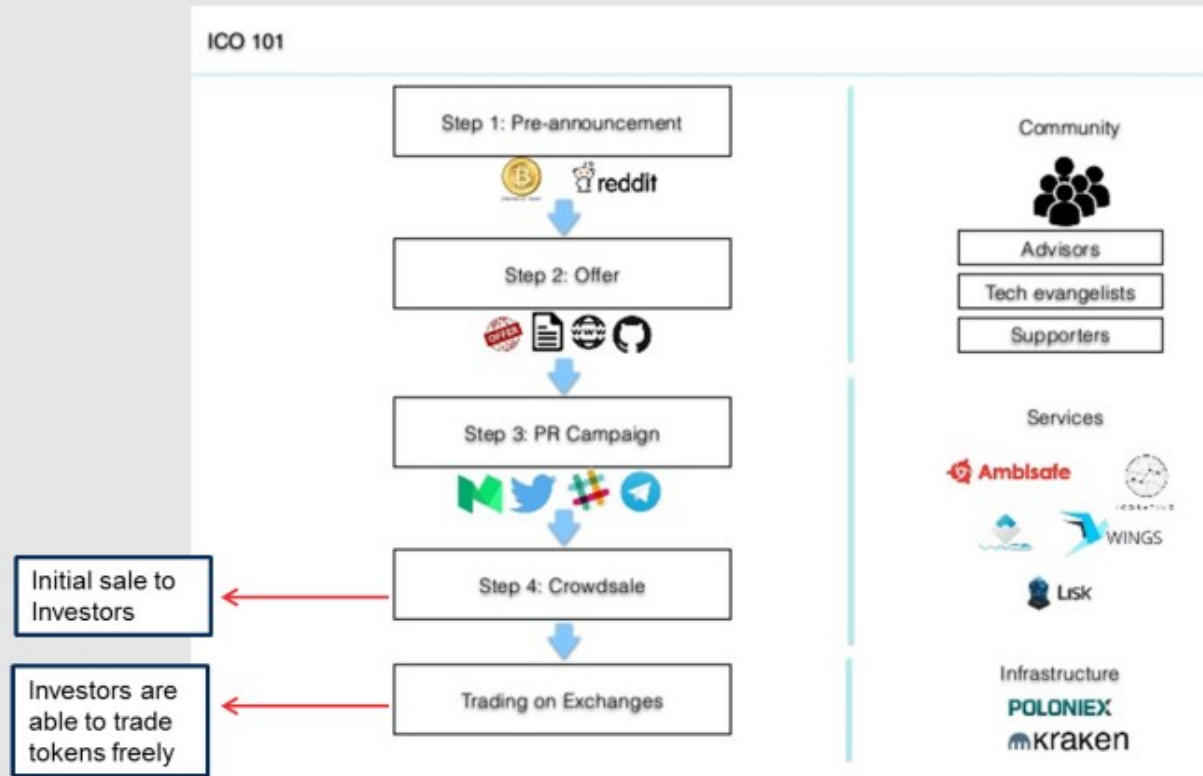


what is ICO?

- Initial coin offering / token crowd sale
- Fundraising
- Digital token / cryptocurrencies in exchange for fund (another cryptocurrency or fiat currency)
- ICO vs crowdfunding
- ICO vs IPO

**Baker
McKenzie.**

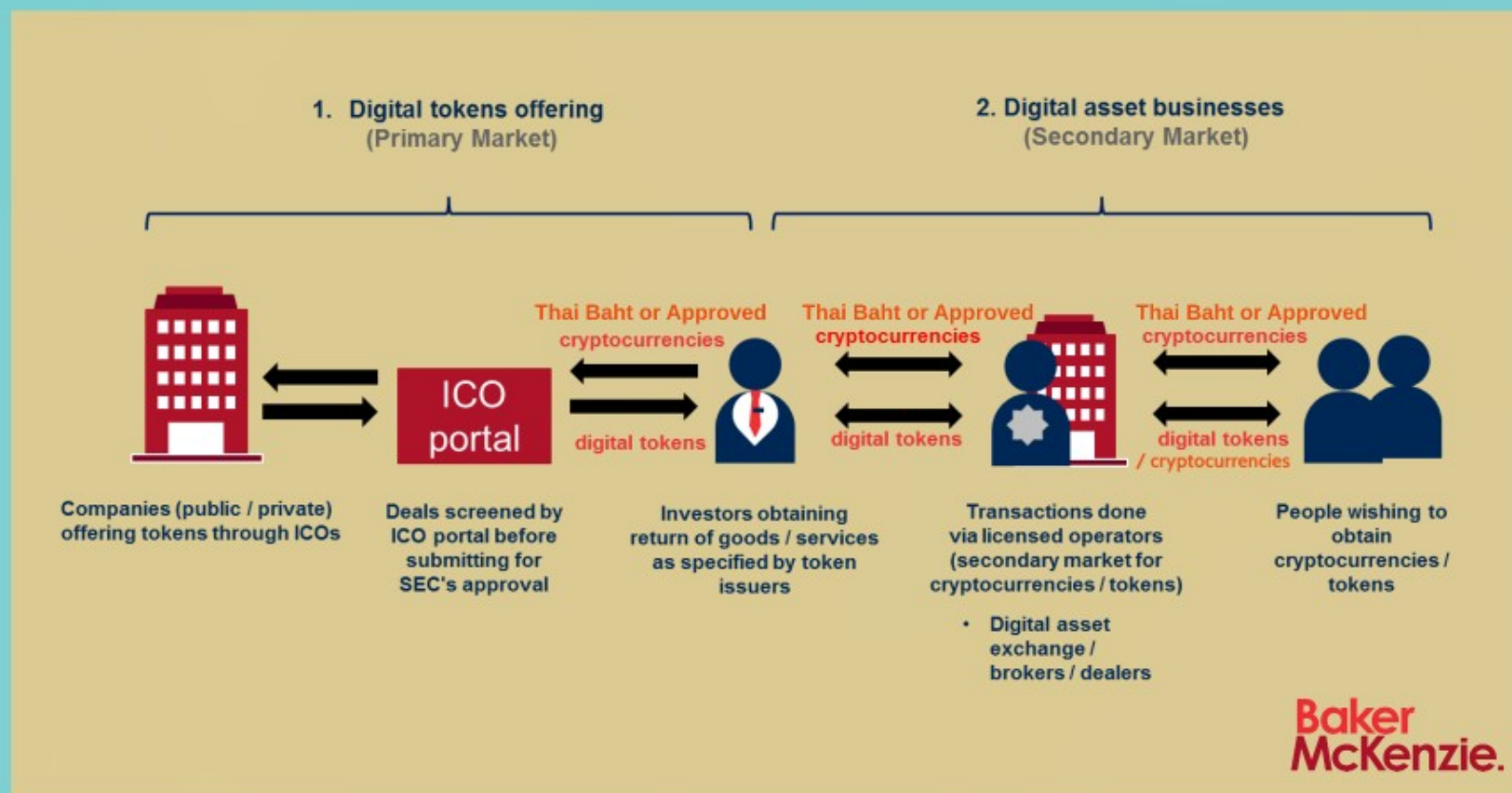
ICO Process



Source: Lena Kuznetsova and Oxana Kunets

**Baker
McKenzie.**

Overview of ICO process in Thailand



Types of cryptocurrencies and digital tokens

1. Investment Token

The DAO (2017)

- Functions: operated as a for-profit entity that would create and hold a corpus of assets through the sale of DAO Tokens to investors, which assets would then be used to fund projects.
- Tokens: DAO Tokens
- Rights: The holders of DAO Tokens stood to share in the anticipated earnings from these projects as a return on their investment in DAO Tokens and could monetize the tokens on a secondary market.

2. Utility Token

Filecoin (Data Storage and Retrieval Service) (May 2018)

- Functions: Filecoin protocol provides a data storage and retrieval service via a network of independent storage providers that does not rely on a single coordinator.
- Tokens: Filecoin tokens
- Rights: Utility tokens where Clients can store or retrieve their data by paying Storage Miners in Filecoin tokens.



3. Asset Token

Goldmint (Tokenized Gold) (May 2018)

- Functions: The platform uses a special blockchain that helps gold owners trade, loan, invest in and, generally, use their commodities for profit.
- Tokens: MNT
- Rights: It is used as a Proof-of-Stake (PoS) consensus algorithm and MNT holders can also participate in the right to vote on changes to the platform.

4. Cryptocurrency Token

EOS (Blockchain Operating System) (June 2018)

- Functions: a consensus blockchain operating system that provides databases, account permissions, scheduling, authentication, and internet-application communication.
- Tokens: EOS (native coin)
- Rights: investors holding native EOS tokens are responsible for the management of the entire ecosystem.

**Baker
McKenzie.**

Digital Tokens and Cryptocurrencies

Utility Tokens

Token Name	Sector	Type	Rights of Token Holders
"Stack"	Blockchain Infrastructure	Utility	<ul style="list-style-type: none">• Tokens are used to pay for the access to control mechanism for performing various operations on the Blockstack network.
"WRP"	Energy	Utility	<ul style="list-style-type: none">• The tokens serve as a priority access to the energy auctions.
"PRO"	Real Estate	Utility	<ul style="list-style-type: none">• The tokens are required to access PRO's services in real estate commerce.
"SHIP"	Supply and Logistics	Utility	<ul style="list-style-type: none">• Transactions of freight shipments conducted via Shipchain's blockchain are paid in tokens;• Tokens are also needed to access Shipchain's services

Investment Tokens

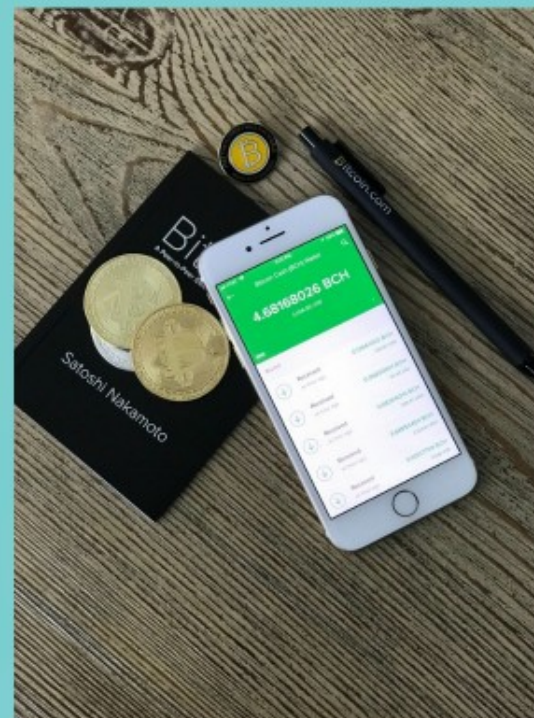
Token Name	Sector	Type	Rights of Token Holders
"BNK"	Banking and Finance	Investment	<ul style="list-style-type: none">• Token holders receive 20% payment of Bankera and SpectroCoin's transaction net revenue on a weekly basis.
"EVN"	Cryptocurrency Mining Operation	Investment	<ul style="list-style-type: none">• Token holders are entitled to receive profits from Envion's mining operation.
"DAO"	Venture Capital Fund	Investment	<ul style="list-style-type: none">• DAO token holders stood to share in the anticipated earnings from projects that the DAO invested in and could monetize the tokens in a secondary market.

Asset Tokens

Token Name	Sector	Type	Rights of Token Holders
"MNTs"	Gold Commodity	Asset	<ul style="list-style-type: none"> • Tokens are used as Proof-of-Stake (PoS) of consensus algorithm; • MNT holders can also participate in the right to vote on changes to the platform.
"Brickblock Tokens"	Real Estates	Asset	<ul style="list-style-type: none"> • Tokens serve as a Proof-of-Asset (PoA); • PoA token holders are legally entitled to the profits of the underlying asset; and • PoA tokens are tradeable on the secondary market. Sell their share of a property.

Cryptocurrencies

Token Name	Sector	Type	Rights of Token Holders
"EOS"	Blockchain Operation System	Cryptocurrency	<ul style="list-style-type: none"> • Investors holding native EOS tokens have the right to manage the EOS ecosystem.
"PumaPay Tokens"	Cryptocurrency Billing and Payment System	Cryptocurrency	<ul style="list-style-type: none"> • PumaPay tokens serve as the only means to transfer value between parties on PumaPay and can be converted into other cryptocurrencies or fiat currencies.



**Baker
McKenzie.**

ICOs in 2018

ShipChain

Types	Supply and logistics
Fuctions	Smart contract services to release payment escrows and to serve as a more detailed bill of lading.
Tokens	SHIP tokens
Right	Transactions on the blockchain for freight shipments will be paid in tokens, and settled in tokens.



WePower

Types	Energy
Fuctions	Enables renewable energy producers to raise capital by issuing their own energy tokens and tokenizing energy representing a contracting mechanism between an energy producer and buyer.
Tokens	WRP
Right	a utility token that serves as a priority access to the energy auctions

Bankera

Types	Banking and Finance (Investment Tokens)
Fuctions	improve cash flow by extending finance for payment processing against future expected payments, based on historical cash flows and expected payments.
Tokens	BNKs
Right	Security tokens- holders receive 20% payments based on Bankera and SpectroCoin's transaction net revenue on a weekly basis.



Medicalchain

Types	Healthcare, hospital and insurance
Fuctions	Medicalchain uses blockchain technology to securely store health records and maintain a single version of the truth. The different organisations such as doctors, hospitals, laboratories, pharmacists and health insurers can request permission to access a patient's record to serve their purpose and record transactions on the distributed ledger..
Tokens	MedToken (MTN)
Right	use Medicalchain platform (a doctor-to-patient telemedicine application and health data market place) for healthcare services which are empowered by their health data and secured by smart contract

KODAKCoin from Kodak and WENN Digital

- After announcement, stock price tripled
- Purpose: use blockchain to help photographers their collectives by creating permanent immutable records of ownership
- May 21: Seeking to raise \$50 million by selling SAFTs (Simple Agreements for Future Tokens- Investment contracts to be sold to accredited investors to fund development that gives buyers right to buy certain number of tokens at future date) as opposed to token due to uncertain securities laws

JFin coin from J Ventures (Jay Mart Plc)

- First SET-listed company to do an ICO at subsidiary level in February (prior to regulation)
- At ICO: 6.60 baht, 300 million digital tokens, 100 million sold within first 55 hours of February ICO
- Reportedly acquired 660 million baht
- Purpose: blockchain-based FinTech platform starting from loans
- Status: Trading day in secondary market showed price dropping 50% from ICO

ICO case studies

Telegram

- Dubai-based encrypted messaging service that raised \$1.7 billion without a public sale
- Purpose: to build the Telegram Open Network- blockchain-based platform that extends its messaging app into a range of services that include payments, file storage, censorship-proof browsing and decentralized apps)
- Status: Canceled public sale due to successful private sale. Unofficial deals where early backers sell to others due to high demand

Sears

- Possibly next as it would be a means of raising capital and building a loyalty program that would be funded by traders of its tokens and that would be a free discount marketing campaign. E.g. if a customer redeems 50,000 Sears tokens for a microwave, Sears could then sell it to the market for an equivalent amount of cash.
- Speech by CEO of Sears on helping company bounce back mentions doing "any means necessary" to maximize value of its assets and Kodak shares increasing after its blockchain initiative

MealToken from Nostrum

- Goal was to raise 60 million euros
- Purpose: Increase number of restaurants to 500, promote crypto-franchise platform (4% of proceeds for this) and tokenization of Nostrum ecosystem (35% of proceeds for this)
- MealToken is a utility token that acts as a reward/incentive instrument and also used to increase franchisees
- Had delays due to uncertain market outlook for cryptocurrencies and not complying with initially expected terms for support for Swiss regulator, but has started private sale, and projects public sale in October in light paper

ICO case studies in Thailand



**Baker
McKenzie.**

T77 Peer-to-Peer Energy Trading Platform

- The collaboration between BCPG, Sansiri and Power Ledger begun trials for a peer-to-peer renewable energy trading platform. Its participants located in Bangkok's T77 urban precinct, include the Habito Shopping Mall, Bangkok Prep School, Bangkok Dental Hospital, and the Park Court Serviced Apartments owned by Thai real estate developer Sansiri.
- The blockchain technology aims to facilitate the trading of excess energy generated by rooftop solar panels, which will reduce costs and increase usage of excess renewable energy. Power Ledger's peer-to-peer platform allows building managers to trade their excess energy to who they chose and at a chosen price through a secure and transparent and secure market platform.
- The platform is powered by a dual-token system, consisting of POWR tokens and Sparkz tokens. Users of the platform interact with Sparkz tokens, which represent the value of energy traded and are tied to local currency to reflect local energy prices.
- Currently, the solar microgrids produce around 635 kilowatts of energy. However, pending successful completion of the trial, BCPG plans to increase the energy production to around 2 megawatts to be utilized by 31 other prospective projects.

ICO VS Other Financing Options

**Baker
McKenzie.**

No.	Financing Options	Treatment	Regulatory Requirements	Issuers	Investors
	ICO	?	<ul style="list-style-type: none"> Issuers must obtain prior approval from the SEC Office and must file a registration statement and draft prospectus to the SEC Office. The offering of digital tokens can only be done through SEC approved ICO Portal. 	Private Company Limited and Public Company Limited established in Thailand and approved by the SEC	Institutional Investors, Venture Capitals, Private Equity and Ultra High Net Worth: unlimited Retail investors: Capped at THB 300,000 per person/per offering; Offering limits for retail investors: ≤ 4 times the shareholders' equity of the issuer, or ≤ 70% of the total offering amount
1.	IPO	Equity	<ul style="list-style-type: none"> appoint financial advisors ("FA") (under the SEC's approved list) to undertake the application and the registration statement submit an application, the registration statement and draft prospectus to the SEC the application and the registration statement shall be prepared in accordance with the SEC's regulations with complete supporting documents appoint underwriter apply to the SET for trading of shares on the SET 	Public Company Limited	All types of investors
2.	Debenture (For Thai company offering Thai Baht denominated debentures in Thailand to the public)	Bond	<ul style="list-style-type: none"> appoint FA to undertake the application and the registration statement submit an application and the registration statement to the SEC the application and the registration statement shall be prepared in accordance with the SEC's regulations with complete supporting documents appoint the intermediaries to screen and underwrite the product appoint bond representative 	Private Company Limited and Public Company Limited	All types of investors

ICO VS Other Financing Options

No.	Financing Options	Treatment	Regulatory Requirements	Issuers	Investors
	ICO	?	<ul style="list-style-type: none"> Issuers must obtain prior approval from the SEC Office and must file a registration statement and draft prospectus to the SEC Office. The offering of digital tokens can only be done through SEC approved ICO Portal. 	Private Company Limited and Public Company Limited established in Thailand and approved by the SEC	Institutional Investors, Venture Capitals, Private Equity and Ultra High Net Worth: unlimited Retail investors: Capped at THB 300,000 per person/per offering; Offering limits for retail investors: ≤ 4 times the shareholders' equity of the issuer, or ≤ 70% of the total offering amount
3.	Equity Crowdfunding	Equity	Equity-based crowdfunding shall be done through funding portals which is approved by the SEC	Private Company Limited and Public Company Limited	Non-retail investors: unlimited Retail investors: Capped at THB 50,000 per one entity and the overall investment amount ≤ THB 500,000 per year Offering limits for retail investors: ≤ THB 20 million within the first 12 months and the overall investment limit ≤ THB 40 million
4.	Private Equity / Venture Capital Financing	Equity (although some are structured as debt)	N/A	Private Company Limited	Private Equity Funds, Venture Capitalists, Angel Investors
5.	Loan	Debt	N/A	Private Company Limited and Public Company Limited	N/A



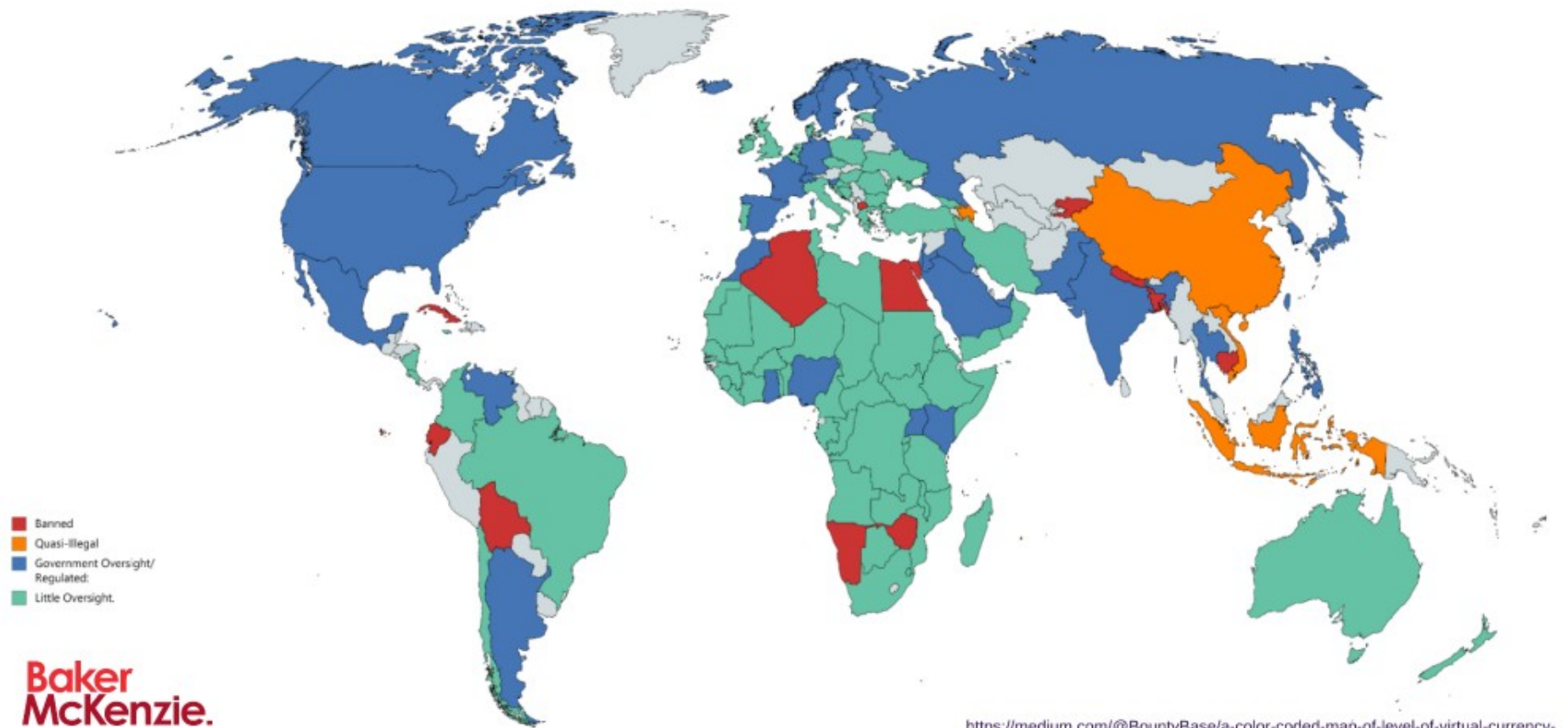
**Baker
McKenzie.**



Overview

**Baker
McKenzie.**

Legal Status of Cryptocurrencies (as of March 2018)



<https://medium.com/@BountyBase/a-color-coded-map-of-level-of-virtual-currency-regulation-by-country-f90d5d4fe50d>

Created with [kidoai.com/chart.net](#) ©

Thailand Regulatory Regime



1. Emergency Decree on the Digital Assets Businesses B.E. 2561

1. Offering of Digital Tokens

- Digital Tokens
- Cryptocurrencies
- Issuers
- ICO Portals

2. Digital Asset Businesses

- Digital Asset Exchange
- Digital Asset Broker
- Digital Asset Dealer

1. New types of income

- a share of profit or any benefit derived from holding or having possession of digital Tokens
- capital gain from the transfer of cryptocurrencies or of digital tokens

2. Impose withholding tax obligation

2. Emergency Decree on the Amendment of the Revenue Code (No. 19) B.E. 2561



**Baker
McKenzie.**

Cryptocurrencies & Digital Tokens



Cryptocurrencies

- electronic data units
- created on an electronic system or network
- for the purposes of being used as a medium of exchanging goods, services, rights, and trade of digital assets
- and other electronic data units as designated by the SEC

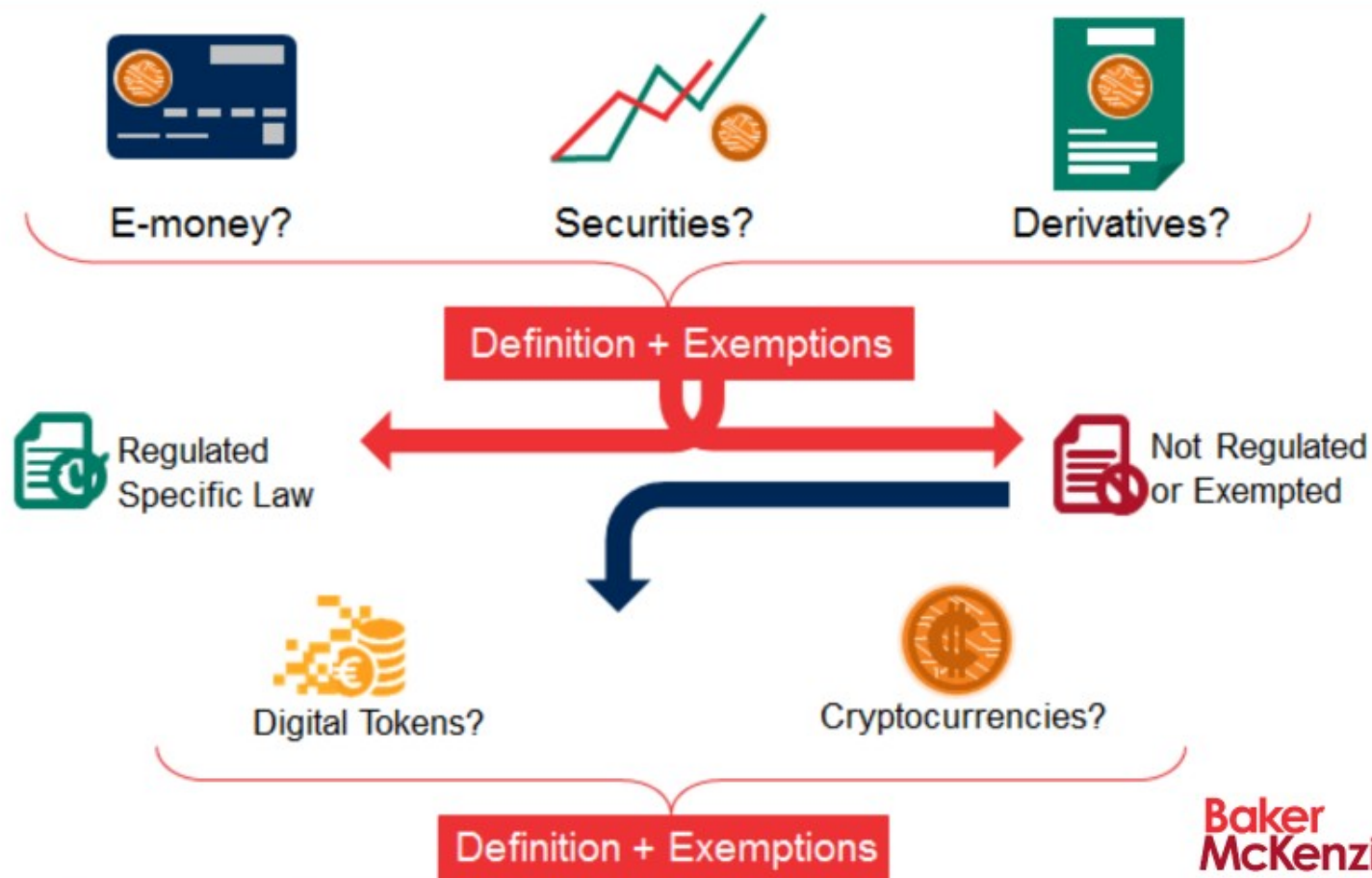


Digital Tokens

- electronic data units
- created on an electronic system or network
- for determining
 - (1) rights of an investor to participate in an investment, any project or business (i.e. investment token) or
 - (2) rights to receive specific goods; services; or as agreed (i.e. utility token)
- and other electronic data units as designated by the SEC

**Baker
McKenzie.**

What is my product in the eyes of the laws?





Bitcoin

The 7 Wonders

Bitcoin
Cash



Ethereum

Ethereum
Classic



Litecoin

Ripple



Stellar

**Baker
McKenzie.**

Digital Asset Businesses

1. Technology companies
2. Top-tier global companies
3. Financial Institutions
4. Digital Assets Businesses in Thailand

1.

2.

3.

4.

**Baker
McKenzie.**

1. Technology Companies

Coinbase

- Coinbase will take its existing trading platform (GDAX) and create version exclusively for sophisticated institutional investors
- It has acquired Keystone Capital Corp to allow it to operate as registered broker-dealer, allows them to offer traditional equities and blockchain-based securities.
- Coinbase is headquartered in San Francisco, California. They broker exchanges of Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic and Litecoin with fiat currencies in around 32 countries, and Bitcoin transactions and storage in 190 countries worldwide.

**Baker
McKenzie.**

LINES' BITBOX

- BitBox is a cryptocurrency exchange based in Singapore. It will be operated by Line Tech Plus, Singapore-based company under Line and LVC Corp., a Line Group subsidiary focusing on cryptocurrency and blockchain businesses.
- The platform only allows crypto-to-crypto trading, and does not accept exchanges between fiat money and cryptocurrencies.
- BitBox currently handles 30 or more cryptocurrencies including Bitcoin, Ethereum, Bitcoincash and Litecoin, selected through a review by a listing committee composed of experts
- TRON (TRX) is the first coin project to pass the review process by the BITBOX open-listing committee.



2. Top-tier global companies



**Baker
McKenzie.**

Starbucks and Microsoft

- Starbucks along with Intercontinental Exchange, Microsoft and BCG, among others, is working to launch a new company called **Bakkt** that will enable consumers and institutions to buy, sell, store and spend digital assets on a seamless global network
- The Bakkt's first use cases will be for trading and conversion of Bitcoin versus fiat currencies, as Bitcoin is today the most liquid digital currency. The effort is designed to address evolving needs in the estimated \$270 billion digital asset marketplace.
- The platform will convert Bitcoin and other cryptocurrencies into U.S. dollars that can be used to buy a Cold Foam Cascara Cold Brew, Matcha Lemonade or anything else at Starbucks.



3. Financial Institutions

Goldman Sachs (in preparation stage)

- The move is set to make Goldman Sachs the first major Wall Street bank to open a bitcoin trading desk, however it will only offer a limited numbers of derivatives at first.
- It will trade Bitcoin futures in a principal, market-making capacity and will also create non-deliverable forward products.
- It will not initially be buying and selling actual Bitcoins, a team at the bank is looking at going in that direction if it can get regulatory approval and figure out how to deal with the additional risks associated with holding the virtual currency.

Morgan Stanley (in preparation stage)

- Morgan Stanley is moving quickly to add cryptocurrency to their trading products. Their goal is to create a specific desk for institutional traders, ICOs, and arbitrage
- Morgan Stanley has already cleared up some cryptocurrency futures for its clients; the firm has been clearing bitcoin futures trades made on Cboe Global Markets and CME Group.

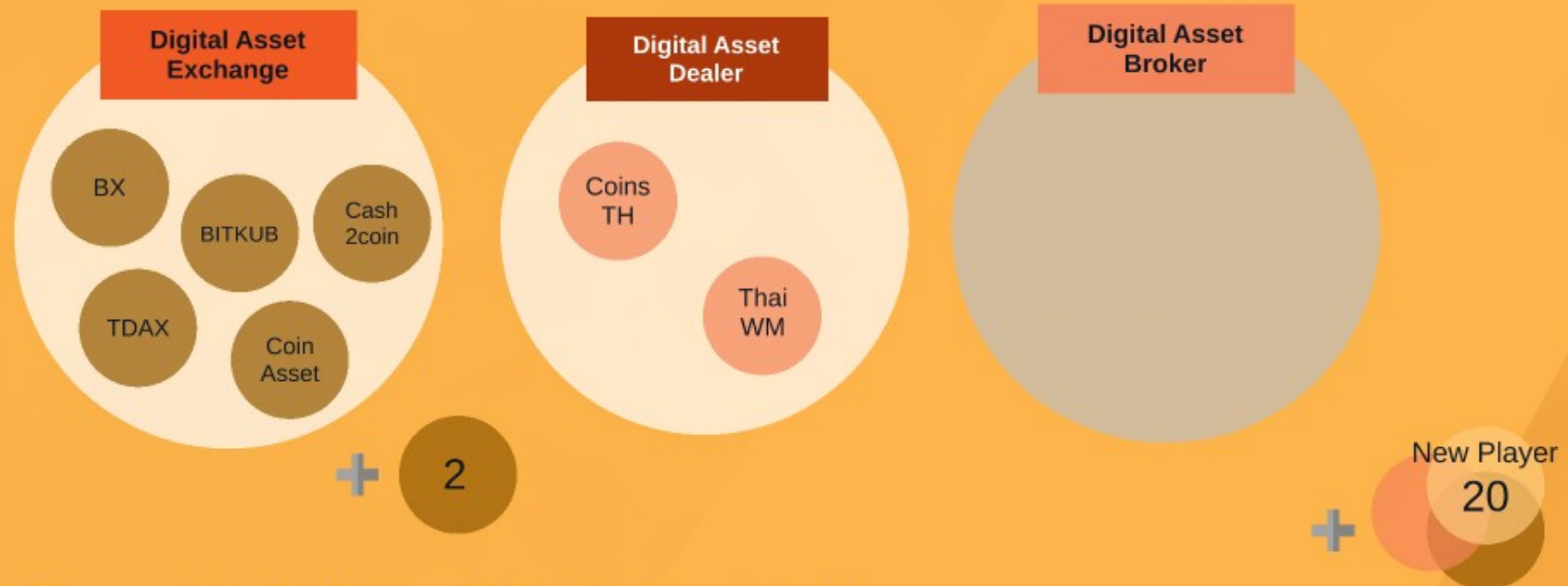
Shorcan Digital Currency Network

- Toronto Stocks Exchange Group (TMX) announced the Shorcan Digital Currency Network (Shorcan DCN), a cryptocurrency brokerage that will provide OTC Bitcoin and Ethereum trading services combined with consolidated market data.
- Shorcan DCN, Canada's leading multi-asset class broker, is teaming up with Paycase Financial (Paycase), to provide brokerage services and global data products. TMX Group will be offering a new cryptocurrency brokerage service focused on Bitcoin and Ether.
- Shorcan DCN is designed to leverage the combination of Shorcan Brokers' expertise in providing clients in the Canadian financial industry with liquid, efficient and reliable brokerage services with Paycase's premier cryptocurrency data aggregation platform and established worldwide network of industry leaders and participants.

**Baker
McKenzie.**

Digital Assets Businesses in Thailand

The following are current business operators which have submitted the license application to the SEC office. These operators are allowed to operate their businesses until they receive the order otherwise.



https://www.sec.or.th/mpublish/digitalasset/digitalasset_listintermediaries.html

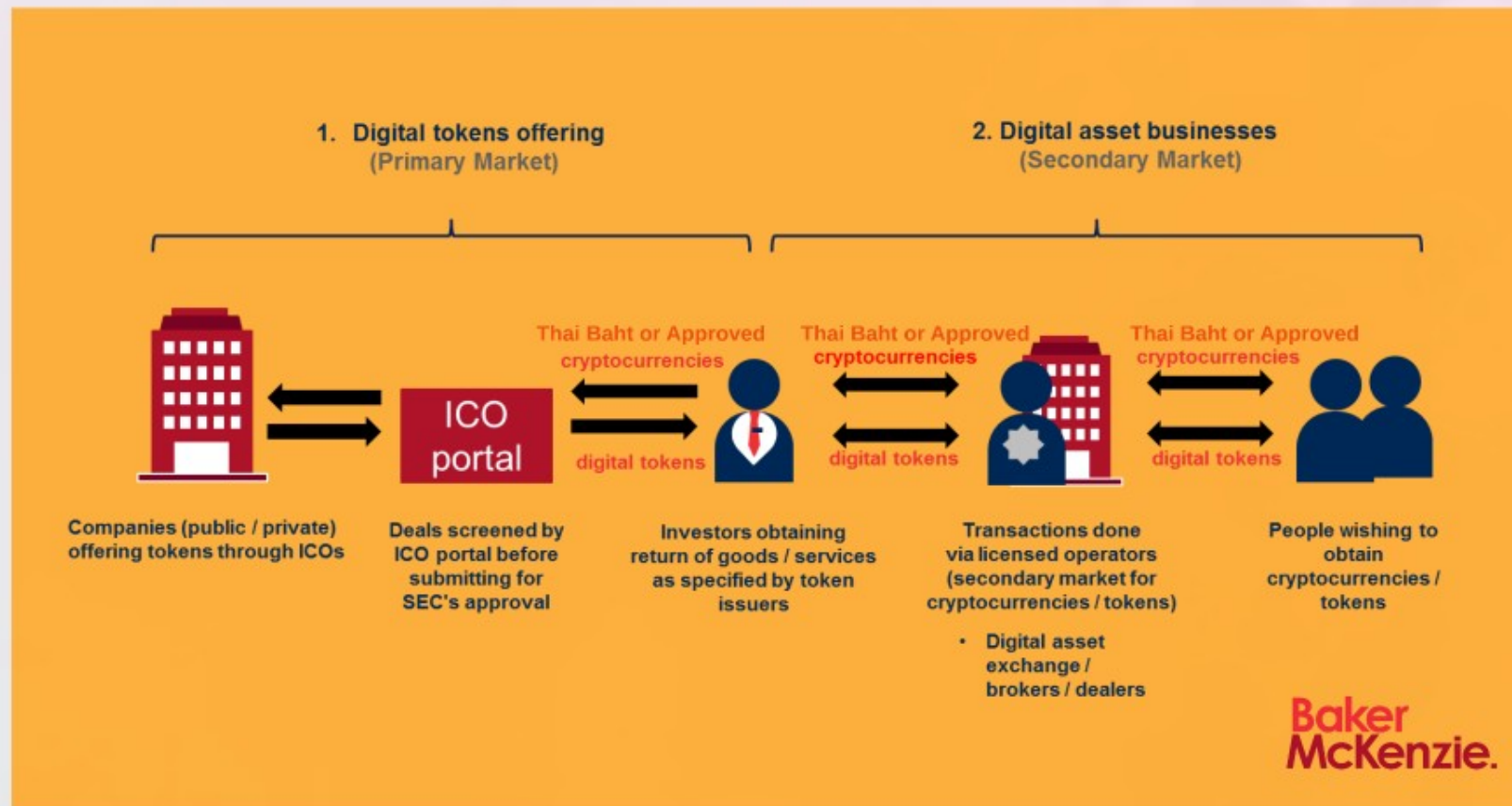
Regulated Activities

Overview

Offering of Digital Tokens

Digital Asset Businesses

Overview

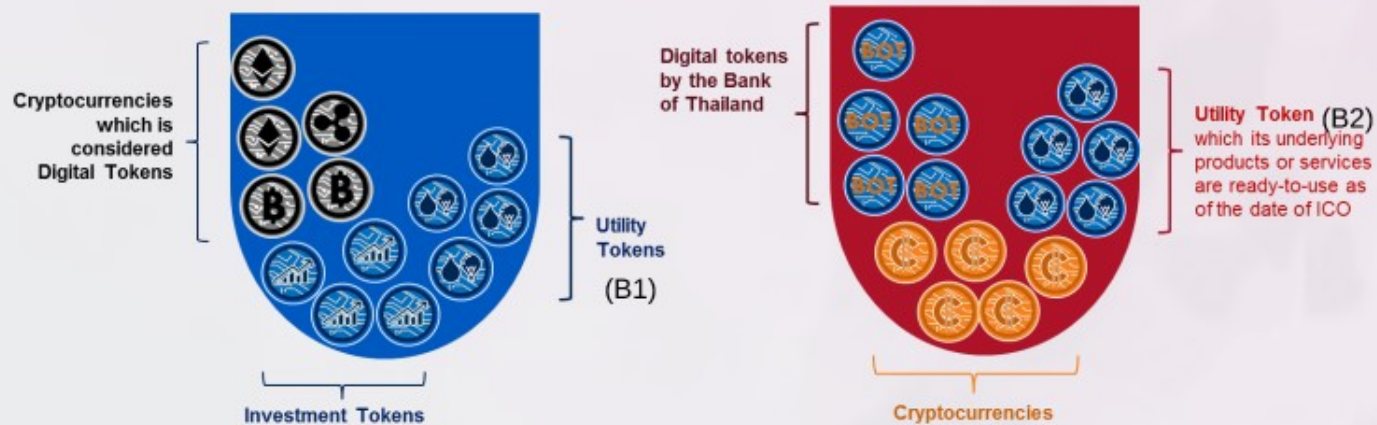


Blue Jar of regulated items



Offering activity
is regulated

Exempted from
requirements
for offering activity



(1) Offering of Digital Tokens to the Public

Baker
McKenzie.

Key Criteria

- Company established in Thailand with registered capital ≥ 5 million Baht
- Have a proper working system with sufficient responsible staff
- Directors, executive directors, persons with management power must not have prohibited characteristics prescribed by the SEC Office
- Must not have a risk on financial status or conflict of interest

Major Roles

Toward ICO projects



Due diligence on Digital Tokens, registration statement and prospectus, source code, qualifications of issuer and etc.

Toward investors

KYC/CDD Investors, categorize and inform rights and limitations, provide knowledge test.



Key Criteria for SEC's Approval



Issuer Entity

- Company established in Thailand
- Directors, executive directors, persons with management power must not have prohibited characteristics prescribed by the SEC Office
- must have a solid business plan
- must have the audited financial statements complied with Thai Financial Reporting standards by an auditor whose name is in the approved lists or as prescribed by the SEC Office



Digital Tokens

- obviously clarify that it is an investment token or utility token and clearly determine holders' right
- source code must be disclosed



Registration Statement and Prospectus

must cover key elements prescribed by the SEC Office

PRIMARY MARKET



Approved ICO Portal



Approved Issuer



Digital Tokens

Thai Baht / Approved Cryptocurrencies*



Investors

- Institutional Investors
 - Ultra High Net Worth
 - Private Equity
 - Venture Capitalists
- able to invest without limitation
- THB 300,000 /person/offering*
- Retail Investors \leq

*Offering limit for retail investors in a deal: the higher of
(1) ≤ 4 times the shareholders' equity of the issuer; or
(2) $\leq 70\%$ of the total offering amount

*Approved Cryptocurrencies consist of Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, Litecoin, Ripple and Stellar which must also be obtained from the sale, exchange or deposit with approved Digital Asset Business operators.

Baker
McKenzie.

(2) Digital Asset Businesses

Persons or entities intend to invest in Digital Tokens



SECONDARY MARKET

Digital Asset Businesses

- established in Thailand
- licensed by MOF and approved by Office of the SEC
- proper KYC/CDD, customer suitability and capability inspection
- appropriate operating system and IT security



Digital Asset Exchange

- paid-up registered capital \geq THB 50 million
- maintain shareholders' equity \geq THB 25 million
- product screening
- asset safekeeping
- fair marketplace



Digital Asset Broker

- paid-up registered capital \geq THB 25 million
- maintain shareholders' equity \geq THB 12.5 million
- asset safekeeping



Digital Asset Dealer

- paid-up registered capital \geq THB 5 million
- maintain shareholders' equity \geq THB 2.5 million

* A digital asset business operator could not be the exchange and the dealer in one entity

The license fee for operating an **exchange** of Digital Tokens: THB 2.5 million and the same amount of fee is applicable for operating an exchange of Cryptocurrencies.

The annual fee is 0.002% of the total trading value and the annual fee is in the range of THB 0.5 million - THB 20 million.


The license fee for **broker** of Digital Tokens: THB 1.25 million and the same amount of fee is applicable for brokers of Cryptocurrencies.

The annual fee is 0.001% of the total trading value and the annual fee is in the range of THB 0.25 million - THB 10 million.

The license fee for **dealer** of Digital Tokens: THB 1 million and the same amount of fee is applicable for dealers of Cryptocurrencies.

The annual fee is 1% of the profit from the dealing of Digital Assets and the annual fee is in the range of THB 0.1 million - THB 5 million.

**Baker
McKenzie.**



Issues for consideration

1. Purpose of ICO

(Fundraising, ecosystem, blockchain initiatives)

2. Comparison to other fundraising options

3. Market / Investors

4. Legal Issues

- licensing and regulatory requirements
- legal documentation
 - Terms and Conditions
 - Privacy Policy
 - Agreements with technology providers
 - Disclaimers
 - Prospectus
- Escrow Arrangement
- Data Protection
- AML/CTF
- IT Security
- Tax
- Scams / Frauds / Hacks
- Exchange Control
- Compliance with existing rules for:
 - Securities Companies
 - Shareholders (especially listed company)
 - Acquisition and Disposition of Assets
 - Connected Transactions
 - Disclosure of Information

**Baker
McKenzie.**

What is the next move ?



**Baker
McKenzie.**

Scope of potential business operation under the BOT's guidance

in accordance with the BOT's circular letter no. TorPorTor.ForNorSor.(23)Wor. 1759/2561 dated 1 August 2018

	Issuer of digital tokens	ICO Portal	Digital asset businesses	Investment in ICO (Primary Market)	Investment in Crypto currencies (Secondary Market)	Advisory
Financial Institutions	✗	✗	✗	✗	✗	+
Securities Companies	✓	✓	✓	✓	✓	✓
Asset Management Companies	✓	✓	✓	✓	✓	✓
Insurance Companies	✓	✓	✓	✓	✓	✓
Venture Capitals	+	+	+	+	+	+

- ✓ Able to do with an approval from the SEC and compliance with regulations of relevant authorities
- ✗ For this initial period, the BOT request not to operate
- +
- Financial Institutions can only solicit or provide any advices for investment in digital assets to customers who are institutional investors, ultra high net worth investors, and high net worth investors.
- +
- For other companies in financial conglomerate that are not specifically be regulated by specific regulators, parent company must apply for approval from the BOT on a case-by-case basis.

- Financial Institutions will be required to supervise the risks of financial conglomerate in certain perspective (e.g. ensure the compliance with AML/CTF laws, IT security, customer protection)
- In case Financial Institutions intends to issue or operate businesses in relation to digital tokens with an objective to develop financial innovation, regulatory sandbox participation might be required.

Securities Companies



1. Approval for additional business operation



2. Declaration on:

- conflict of interest management
- separation of resources
- relativity or support to digital asset businesses

**Baker
McKenzie.**



Komkrit Kietduriyakul
Partner
Bangkok, THAILAND
Tel: +66 2666 2824 ext. 3024
Email: Komkrit.Kietduriyakul
@bakermckenzie.com



Dr. Primyadar Duangrat
Partner
Bangkok, THAILAND
Tel: +66 2666 2824 ext. 3059
Email: Primyadar.Duangrat
@bakermckenzie.com



Kullarat Phongsathaporn
Partner
Bangkok, THAILAND
Tel: +66 2 666 2824 ext. 3106
Email: Kullarat.Phongsathaporn
@bakermckenzie.com

**Baker
McKenzie.**