

Thailand Enhances Regulatory Oversight for Digital Token Offerings



In this legal update, we will discuss the recent Announcement of the Board of Directors of the Securities and Exchange Commission of Thailand (SEC) No. 3/2566. The announcement introduces amendments to the criteria, conditions, and procedures for granting approval to digital token offering operators. These amendments aim to enhance regulatory oversight and address potential conflicts of interest within the digital token offering ecosystem.

Amendment Highlights

1. Definition of “Group Company” and “Controlled Entity”:



The announcement adds the definitions of “Group Company” and “Controlled Entity” to the definition of “Major Investor.” A Group Company refers to a company affiliated with the digital token offering operator, where the shareholding structure exceeds 50 percent or there is common control. A Controlled Entity, on the other hand, involves holding a majority of voting rights, exercising control over voting rights, or controlling director appointments in a legal entity.

2. Introduction of Articles 10/1, 10/2, and 10/3:

The announcement introduces new articles, namely 10/1, 10/2, and 10/3, to the existing SEC regulations for digital token offering operators. Article 10/1 focuses on ensuring operators’ independence and prohibits conflicting interests. It prohibits operators from holding shares in the issuer, having directors or employees related to the issuer, or possessing interests compromising their independence.

3. Consideration of Conflicting Benefits:

Article 10/2 outlines factors to consider when assessing conflicting benefits. This includes analyzing relationships between operators and issuers, associated individuals, and benefits conflicting with the role of an operator. The calculation of shareholding ratios, including convertible securities, warrants, and derivative rights, is also addressed in this article.

4. Exceptions to Shareholding and Appointment Restrictions:

Article 10/3 provides exceptions to the restrictions on shareholding, director appointments, and ownership interests. Notably, exceptions apply to cases involving management of assets belonging to the King or government agencies, financial system rehabilitation and development funds, and operations of state enterprises established by specific laws.

5. Amendments to Digital Token Offering Portal Providers' Announcement:

The announcement also introduces amendments to the Announcement regarding the Approval of Digital Token Offering Portal Providers. It requires portal providers to notify the SEC in writing within 15 days if they cannot fulfill the requirements, propose remedies, or intend to temporarily or permanently cease operations. The announcement also specifies the procedure for resuming operations after a temporary cessation.

6. Delegation of Authority:

The amendments include provisions on the delegation of authority to others to perform duties. They outline the delegation process and conditions for digital token offering portal providers.

Commentary

The recent announcement by the Board of Directors of the Securities and Exchange Commission of Thailand introduces significant amendments to the criteria, conditions, and procedures for granting approval to digital token offering operators. These updates aim to enhance regulatory oversight and ensure the independence and integrity of digital token offering operators in the country.

One notable addition is the inclusion of the definitions of "Group Company" and "Controlled Entity" within the definition of "Major Investor." This clarifies the relationships between affiliated companies and individuals with control over the business, strengthening the criteria for approving digital token offering operators.

The newly introduced Articles 10/1, 10/2, and 10/3 address potential conflicts of interest that may arise for digital token offering operators. These provisions prohibit operators from holding shares in the issuer, having directors or executives related to the issuer, or having any involvement or interests that compromise their

independence. These measures aim to ensure that operators can perform their duties independently and maintain the integrity of the digital token offerings.

Furthermore, Article 10/2 provides specific considerations for assessing conflicts of interest, such as analyzing the characteristics and relationships between operators and issuers, calculating shareholding ratios, and examining conflicting benefits. These guidelines provide a comprehensive framework for evaluating potential conflicts and promoting transparency within the digital token offering ecosystem.

It is important to note that certain exceptions apply, such as cases involving the management of assets belonging to the King or government agencies, funds for financial system rehabilitation, or operations of state enterprises established by specific laws. These exceptions recognize unique circumstances where different regulations or requirements may be applicable.

The amendments also address procedural matters for digital token offering portal providers, emphasizing the importance of effective communication and compliance. Requirements for notifying the SEC in cases of inability to fulfill criteria, temporary or permanent cessation of operations, and intention to resume operations are clearly outlined. These measures ensure regulatory oversight and provide avenues for accountability and transparency within the digital token offering industry.

Overall, the announcement reflects the Securities and Exchange Commission of Thailand's commitment to strengthening regulations surrounding digital token offerings and promoting a secure and transparent environment for market participants. These updates aim to safeguard the interests of investors, enhance the credibility of digital token offering operators, and maintain the integrity of the financial market in Thailand.

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