The Growth of Cryptocurrency Investments under Thai Government through Legal Measures

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Abstract

The first appearance of cryptocurrency in Thailand was only occurred in a small community and not widely famous among a financial transaction. In 2018 – at the present, Thai people advert a cryptocurrency as a trade and other financial transactions, however, these crypto investments are encountered a large number of commercial issues and principal agencies under Thai government use legal measures or make regulations to intervene and control them. Some of legal measure are problematic to stimulate the digital economic growth under the crypto industry and development of financial platforms. Objectives of the study are presentation of advantages and disadvantages of Thai legal measures to control crypto industries in commerce and methodologies for qualitative research are data collection via laws, policies, and legal cases in Thailand. As results of studies, the early direction of laws and policies from Thai government agencies attempted to prevent customers for crypto trades and company business, these agencies have begun to improve lenient legal approaches.

Keywords: *cryptocurrency; business law; legal measures; commercial law; investment law.*

JEL Classification: K22, K24

1. Introduction to cryptocurrency business in Thailand

Cryptocurrency or Virtual Currency is known as a peer-to-peer electronic cash system, and the first cryptocurrency is Bitcoin [BTC] which was invented in 2008 and represented as the decentralized finance and medium of online exchange in practice. In the earliest stage of crypto business, there are no legal measures to impose on crypto restriction from government, or financial institution in each country, even China which usually enacts rules to restrict rights on business.[2] When the crypto market has continuously grown among other markets, some countries have started to control them with two types of approaches, namely a restriction is based on business liberalization, and attempt to ban any activities related to crypto[3]. Between two primary approaches in the global, an example of the market growth presented that the Bitcoin value in global market has always increased by over 46,449,400% since 2010[4], as well as the price was

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[2] See Almeida, José, and Tiago Cruz Gonçalves, *A Decade of Cryptocurrency Investment Literature: A Cluster-Based Systematic Analysis*, „International Journal of Financial Studies" 11, no. 2: 71, 2023. https:// doi.org/10.3390/ijfs11020071.

[3] V. Anandhabalaji, M. Babu and E. Anandhi, *Cryptocurrency: the good, the bad and the ugly*, 2022 International Conference on Computer, Power and Communications (ICCPC), Chennai, India, 2022, pp. 656-663, doi: 10.1109/ICCPC55978.2022.10072283.

[4] Sky Ariella, Zippia. *30 Striking Cryptocurrency Statistics [2023]: Market Value, Bitcoin Usage, and Trends* Zippia.com. Feb. 28, 2023, the document available online at https://www.zippia.com/advice/crypto currency-statistics/, accessed on March 1, 2023.

0.09$ in 2010, and the estimated price in March 2023 is 27,550.50$. During the period of the BTC value growth before 2023, the price has increased, and also decreased with depending on the affective situation at the same time, however, the popular trend is never faded aways from the global market.

At the beginning of cryptocurrency in 2008, there was officially found no technology of financial trends in Thailand that presented as the primary influence among societies. It is contrary to other countries that make an effort to determine new financial strategies and legal approaches to improve and develop the business and related sectors. In 2014 – 2020, there were the number of company's crypto is about 6 which are a digital asset exchange and facilitate all trading of digital assets, two of them, Huobi and Bitcoin.co[5], ceased operations because a trading of digital asset is not widely popular in Thai market. In 2023, there are thirteen companies left, and must be faced with legal measures from government and agencies that endeavor to control all crypto business and including related transaction. Crypto identities are formally accepted for the world of digital finance consists of a decentralized system, peer to peer network, 24 hrs for trade and exchange, low cost of transaction, and convenient and fast access. These identities influence to insecurity in the national financial and related system, thereby, on February 12, 2018, Bank of Thailand issued circular letters to managers of all financial institutions that asking them for collaboration to do transactions which is not related to cryptocurrency or other digital coins[6] by reasoning that crypto is highly possible to bring problems from transactions, especially, an unidentified account, no property for collateral, the protection of customers's right, and financial crimes. Some of government's negative perspective and legal approaches consider cryptocurrency as an online gambling or a day trader. Business sector is continuously affected by these legal measures and policies.

However, the global popularity of cryptocurrency and various influence of digital businesses has resulted in the moderated legal measures in Thailand which attempted to regulate related businesses and transactions.

2. Research objectives

The research objectives are:

- to study negative and positive influences of legal measure to crypto business in Thailand in order to present a legal point should be improved.
- to present appropriated solutions for government agencies to re-consider some of legal measures.

3. Literature review

The right to occupation. Following, the 2017 Constitution of Thailand section 40[7] assures to a person shall have freedom of occupation. The restriction of right as stated

[5] Prashant JHA, *Huobi to permanently shut crypto operations in Thailand*, the document available online at https://cointelegraph.com/news/huobi-to-permanently-shut-crypto-operations-in-thailand, accessed on March 1, 2023.

[6] Bank of Thailand RPD.(23)Wor. 276/2561 the document available online at https://www.bot.or.th/Thai/FIPCS/Documents/FPG/2561/ThaiPDF/25610039.pdf, accessed on March 1, 2023.

[7] The 2017 Constitution of Thailand, section 40.

by laws without an authority if all or a part of restriction is related with maintaining the national security or economy, the equality of commercial competition, the protection of commercial monopoly, consumer's right, or any public interests. This is the most primary principle to the certification of citizen's right for an occupation within the kingdom of Thailand. Problems for business sector are an interpretation of those definition as follow section 40. When all cryptocurrencies are not examined and controlled from the government, this action will be referred to harm the national security and economy which are able to impact on facing obstacle to do a business in Thailand.

Results of cryptocurrency perspectives. Summary of interviews from government executives for 10 persons and private sector executives for 10 persons who has ages between 16 – 25 years old under the title "perspectives to digital money in Thailand"[8] presented results that digital money or cryptocurrency will be more accepted in the future because it has a low cost of doing business, being more convenient than currently financial channels, and easily to globally accessed by people. It has a high likelihood to be developed to be new business platforms. Nonetheless, the legitimacy of the coin-issuing firm has an impact on acceptability. Underneath factors of price volatility, benefit of dominance, system security, and standard of regulations should all adhere to the international standard.[9]

The national security. In this case of legal interpretation, the meaning of "national security" under laws will experience issues, if an interpretation unfairly restrict people's right because there are a lot of issues for such meanings under judge's consideration. A common meaning depends on each country's interpreted approach, but significant factors depend on physical security on both the domestic and international sides, socioeconomic security, socio-political stability, and psychological security.[10] If any action has a negative impact on these variables, legal enactment or improvement will be to confine rights under laws.

4. Research methodology

Research aims to study the growth of cryptocurrency business under Thai government through legal measures. Categories for this research is historical and descriptive research which are a branch of social sciences.

The survey studies are collected information which related crypto laws, policies, and cases in Thailand.

The documentary analysis and qualitative data are studies of the legislative effects on the growth of crypto business through legal cases in Thailand.

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[8] Perapong Kanoklertwongs. *Digital Money and Financial Freedom to The Thai Economy*. "Humanities and Social Science Research Promotion Network Journal". Thailand. September – December 2021. Volume 4. Issue 3. Pages 79-91. the document available online at https://so06.tci-thaijo.org/index.php/hsrnj/article/download/253668/171597/.

[9] Ibid.

[10] Wishuda Satiporn, *Thai Security: Challenges for The Future,"*King Prajadhipok's institute journal", Volume 14, January – April, 2559. Pages 5 – 25, the document available online at https://so06.tci-thaijo.org/index.php/kpi_journal/article/download/244154/165558/849100.

5. Results and solutions

At the present, crypto is not officially accepted as a medium of exchange under Thai laws. According to identities, it is essential for government financial agencies to enact laws and policies to regulate pertinent operations, investor safety, and the nation's financial stability. The benefits and risks of digital assets were discussed by the Bank of Thailand, the Securities and Exchange Commission, and the Ministry of Finance [the primary agencies to enact legal measures and policies] that there is a need to regulate and manage the usage of digital assets as a means of payment for goods and services (Means of Payment) in order to avoid serious problems for the country's financial stability and economic system on January 25, 2022.[11]

Several industries are affected by cryptocurrencies. According to two characters, Crypto's status is like money and also an asset, therefore, they are able to be adjusted for various business ideas. Digital assets have previously been employed as a means of raising money from the general public and as a medium of exchange[12]. There continues to be no regulation to control the dealing or exchanging of digital assets, even in such places. Economic activities that might have an influence on the nation's financial stability and economic system, as well as the public order. As a result, legal measures were passed to control crypto-related businesses and consumers. The types of crypto businesses that must be regulated under the emergency Decree on Digital Asset Businesses B.E. 2561 [2018] is digital asset exchange, digital asset broker, digital asset dealer, and other businesses relating to digital assets as prescribed by the Minister under the recommendation of the SEC.[13] The scope of study is only businesses which is related with digital asset exchange, digital asset broker, and digital asset dealer.

5.1. Crypto business under legal measures

Table A: Results of crypto business's compliance with the emergency Decree on Digital Asset Businesses B.E. 2561

Types of businesses	License	Token Sale	Right to Trade on Crypto And Token	Authority's disclosure of token information to public	The accession of customer's personal information about trade	The investment analysis for trade
Digital asset exchange	✓	✓	-	-	✓	-
Digital	-	-	-	-	-	-

[11] Publish a state of the Bank of Thailand (BOT), the Securities and Exchange Commission (SEC), and the Ministry of Finance the document available online at https://www.bot.or.th/Thai/AboutBOT/Activities/Pages/JointPress_25012022.aspx.

[12] Cristina Elena Popa Tache, *O corelare a cripto-activelor cu dreptul internațional al comunicațiilor și al noilor tehnologii (A Correlation of Crypto-assets with International Law of Communications and New Technologies)*, in „Revista de Drept Bancar și Financiar", nr. 1/2023 (January - June), Ed. Rosetti online.

[13] The emergency Decree on Digital Asset Businesses B.E. 2561.

asset broker						
digital asset dealer	-	-	-	-	-	-

Resultant detail:

1. The primary concern with the decree is the absence of control over broker or dealer licenses. An unlicensed broker or dealer is not able to verified for reliability and there are high risks to escape an arrest and bring a prosecution against a person, when an offense is committed. Besides, an unlicensed person will be also a legal gap for financial crimes. A license shall be covered a broker and dealer.

2. A legal measure on the scope of investment analysis on crypto trades is covered all an exchange business, a broker, a dealer, and general publish. At this point can be divided into two perspectives: the positive and negative effect for customers and business. If an analysis is not carry out with any fraudulent intention or profits, it is positive possible to permit do the investment analysis. However, this section should be allowed for crypto businesses and the standard of risk assessment for the investment analysis must be under the control of government agencies.

3. Personal information should be preserved for customer's safety, anywise, the possibility of financial crimes to the national security must be only accessed by the government agencies.

4. In cases of token sale, right to trade on crypto and token, and authority's disclosure of token information to public are appropriately legal measures in order to control all crypto businesses under Thai territory.

5.2. The intervention of financial institutions under Thai government

In a case of Bitkub's deal, "Siam Commercial Bank [SCB] via SCBX has cancelled 17.8 billion baht deal to buy a controlling stake in Bitkub online and the proportion of 51% total shares of Bitkub"[14] Bitkub is the largest exchange centre for crypto trades in Thailand and SCBX is one of SCB groups and the most significant goal is to proactively expedite the growth of business into new financial services and comprehensive platform, however, all of groups are under controlled of government.

Results of being a shareholder are able to manage conduction and including business strategies within the company, which is presented as the conduction of private company is expressed by a company, if considering in depth, a shareholder by affiliated companies under the government is the indirect intervention.

5.3. Crypto taxation

Underneath government's policies, there are regulations that effect to taxation from holder's cryptocurrency and related businesses. The revenue code [No.19] B.E. 2561[15] which has amended in section 40 and 50 as follows: taxation is also levied on two other categories:

[14]*SCB scraps deal for Bitkub*, "Bangkok Post", the document available online at https://www.bangkok post.com/business/2376906/scb-scraps-deal-for-bitkub.

[15] The Revenue Code (No. 19) B.E. 2561, section 40 and 50.

1. profits from holding digital tokens

2. earnings from the direct sale of digital tokens and cryptocurrencies [15% withholding tax is payable in this case]

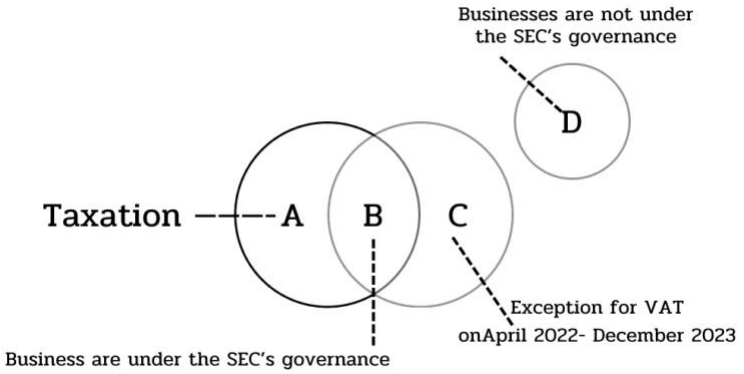
However, there are some problems that was occurred with uncertain information records and almost Thai holders expressed that it is not unreasonable to retrospective collect these taxes. Therefore, the council of ministers approved two bills that offered by the Revenue department on March 8, 2022, as follows:

1. Income Tax: the calculation of taxable income from digital assets: Profit [selling price – cost price] – Loss [Cost price – Selling price] = income in the tax year.

2. Tax withholding: In a case of unidentified account, there are no verified accounts and the uncertain amount of income are not completed to pay tax withholding.

3. VAT: exception for any transactions conducted via SEC from 1 April 2022 to 31 December 2023.

Table B: Taxation for a group of crypto businesses and holders



Crypto taxation is the newest topic for Thailand because the Revenue Department has not effective legal measures on this case. In generally, there are many crypto businesses in. Thailand and on abroad, as well as, some transaction are without borders which are difficult to control. The table B presents that there are a legal gap on a D group that is not collected crypto tax. However, problems depend on the enactment of legal measures to solve with this case.

6. Conclusions

To regulate cryptocurrency business in Thailand, it is difficult to encourage or determine effective legal measures, as well as, crypto is the latest financial technology that has just been accepted in practice. Some businesses are subjected to government intervention by allowing affiliated companies to be a shareholder for more than 50%.

The growth of cryptocurrency businesses in Thailand has become prominent business. At initially, there are limitation for a crypto business, such as, it was unacceptable by laws and some of societies, thus, some of business were closed down.

Afterward, the influence of global treads in the usage of cryptocurrency is widely disseminated to other countries as well as it is one of factors contributing to increase the number of users and business owners are interested in crypto investment. The main factors that directly effect on the increased growth are legal measures, customer's popularity, and government's intervention. In addition to digital assets trade, cryptocurrency are used as a informal medium of exchange for trade without the limited scope, however, there is no certain in legal status to formally accept it under laws. Regardless of the current fluctuation of prices, it has not become to be an impediment to new financial technology. As a result, the overall of cryptocurrency business in Thailand has evolved and adapted with the way of Thai people's life.

Bibliography

1. Almeida, José, and Gonçalves, Tiago Cruz, *A Decade of Cryptocurrency Investment Literature: A Cluster-Based Systematic Analysis*, „International Journal of Financial Studies" 11, no. 2: 71, 2023. https://doi.org/10.3390/ijfs11020071.
2. Anandhabalaji, V., Babu M., and Anandhi, E., *Cryptocurrency: the good, the bad and the ugly*, 2022 International Conference on Computer, Power and Communications (ICCPC), Chennai, India, 2022, pp. 656-663, doi: 10.1109/ICCP C55978.2022.100722 83.
3. Bank of Thailand RPD.(23)Wor. 276/2561 the document available online at https:// www.bot.or.th/Thai/FIPCS/Documents/FPG/2561/ThaiPDF/25610039.pdf, accessed on March 1, 2023.
4. Jha, Prashant, *Huobi to permanently shut crypto operations in Thailand*, the document available online at https://cointelegraph.com/news/huobi-to-permanently-shut-crypto-operations-in-thailand, accessed on March 1, 2023.
5. Kanoklertwongs, Perapong, *Digital Money and Financial Freedom to The Thai Economy*. "Humanities and Social Science Research Promotion Network Journal". Thailand. September – December 2021. Volume 4. Issue 3.
6. Popa Tache, Cristina Elena, *O corelare a cripto-activelor cu dreptul internațional al comunicațiilor și al noilor tehnologii (A Correlation of Crypto-assets with International Law of Communications and New Technologies)*, in „Revista de Drept Bancar și Financiar" nr. 1/2023 (ianuarie-iunie), Ed. Rosetti online.
7. Publish a state of the Bank of Thailand (BOT), the Securities and Exchange Commission (SEC), and the Ministry of Finance the document available online at https://www.bot. or.th/Thai/AboutBOT/Activities/Pages/JointPress_25012022.aspx.
8. Satiporn, Wishuda, *Thai Security: Challenges for The Future, "*King Prajadhipok's institute journal", Volume 14, January – April, 2559.
9. *SCB scraps deal for Bitkub*, "Bangkok Post". The document available online at https://www.bangkokpost.com/business/2376906/scb-scraps-deal-for-bitkub.
10. The 2017 Constitution of Thailand, section 40.
11. The emergency Decree on Digital Asset Businesses B.E. 2561.
12. The Revenue Code (No. 19) B.E. 2561.
13. Zippia, Sky Ariella, *30 Striking Cryptocurrency Statistics [2023]: Market Value, Bitcoin Usage, and Trends*, Zippia.com. Feb. 28, 2023, the document available online at https://www.zippia.com/advice/cryptocurrency-statistics/, accessed on March 1, 2023.