



NFTs under Thai regulations

With the occurrence of non-fungible tokens or NFTs, which can be seen as one form of digital assets, in this relation, the Securities and Exchange Commission of Thailand ("SEC") has then stipulated a guideline regarding NFTs in order to protect investors. To clarify, NFTs is regarded as an appliance of technology that represents ownership or rights of specific intangible property, including but not limited to art, music and picture through NFTs marketplace.

However, there are one significant issue that needs to be addressed before hand. This is because in some cases, NFTs can bear a resemblance to investment tokens or utility tokens, defined as one of "digital assets" under Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) ("Emergency Decree"), but, at the moment, NFTs is not yet to be defined as "digital assets" under the Emergency Decree.

In this relation, NFTs will be determined on a case-by-case basis to distinguish whether or not it falls under the scope of digital assets under the Emergency Decree. The determining factors can be considered as follows:

1. NFTs are not regarded as digital assets in the following cases:
 - In case where NFTs is attached to intangible property which is inseparable;
 - There is no determination of any additional rights to intangible property; and
 - There are no objectives for NFTs to be utilized as an exchange medium.

2. NFTs are regarded as digital assets in the following cases:
 - In case where the NFTs have underlying services and rights to acquire or redeem certain physical or digital properties. The exchange of such NFTs must be conducted through NFT marketplace.

However, currently there is no NFT marketplace that obtains a license to operate as an Digital Asset Exchange. In addition, the licensed Digital Asset Exchange is prohibited from trading NFTs which fall under the terms of digital assets.

Currently, Samart Corporation, via a subsidiary company namely Samart Digital Company (“SDC”), is planning to launch its first NFTs of sports moments in both pictures and video clips by the final quarter and then expand to developing its own tokens of world-class collectible NFTs.

Please note that SEC is in the process of reviewing the criteria on the regulatory control of NFTs and the NFT marketplace to conform with international guidelines.

Should you have any question, please do not hesitate to contact us via info@bgloballaw.com

