

Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



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Cryptocurrency Regulations in Mainland Southeast Asia



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Introduction

The rapid global proliferation of cryptocurrencies—digital currencies using advanced cryptography (typically blockchain) to verify and secure transactions and maintain supply—has seen governments scrambling to regulate what some see as an opportunity and others see as a threat. The digital nature of cryptocurrencies has meant that investors faced with new regulations can quickly seek new jurisdictions to act as a safe harbor for their assets, while developing countries that have a varied history with fiat currency have responded to this high-risk capital inflow in a number of different ways.

In this article, we compare the cryptocurrency regulations (or lack thereof) in mainland Southeast Asia—an area of increasing interest to investors following restrictive policies in China, India, and elsewhere.

Country Overviews

Cambodia - Jay Cohen, Partner and Director, Cambodia

While there is no clear regulatory scheme in Cambodia for cryptocurrencies and cryptocurrency-related activities, a joint statement on cryptocurrencies was released on May 11, 2018, by the National Bank of Cambodia (NBC), the Securities and Exchange Commission of Cambodia (SECC), and the General-Commissariat of the National Police. The release of this statement likely indicates that these ministries would be involved in the regulation of cryptocurrencies in the future, should Cambodia choose to regulate them.

The statement makes it clear that unlicensed operations related to cryptocurrencies (e.g., propagation, buying, selling, trading, and settlement) are illegal. To date, however, neither the NBC nor the SECC have given guidance on how to apply for such a license. This could indicate that a licensing scheme for cryptocurrencies is being considered, but overall the NBC and SECC have shown reluctance to adopt cryptocurrencies in recent public statements.

The statement also indicates that those who participate in cryptocurrency-related activities without obtaining a license from competent authorities would be subject to penalties in accordance with applicable laws. However, it is unclear what laws apply in this case, so the scope of punishments could range greatly in severity.

Laos - Dino Santaniello, Head, Laos

There is also no regulatory framework yet in place in Laos, but the Bank of the Lao P.D.R. (BOL) has issued two notifications and a warning regarding cryptocurrency.

The first, Notification No. 314/BOL, dated August 29, 2018, encourages the Lao population to be more knowledgeable about cryptocurrency. To combat questionable or potentially misleading advertisements on social media and elsewhere promoting the use of cryptocurrencies, the BOL warned that cryptocurrency is not money and cannot be used to pay debts, while expressly identifying that there are no attendant regulations in Laos. The notification also explains the risks, lack of transparency, and potential negative ramifications of using cryptocurrencies for payment.

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The BOL again addressed cryptocurrencies in Notification No. 382/BOL, dated October 30, 2018, which prohibits financial institutions in Laos from engaging in cryptocurrency-related activities or helping their clients to participate in various activities. However, no penalties for violating these prohibitions were clearly indicated. The positions of both notifications were subsequently reiterated in a BOL warning.

Some have interpreted this response as the BOL waiting to learn more about cryptocurrency before deciding upon its approach—merely urging caution rather than taking steps toward providing a clear legal framework. However, although cryptocurrency has not been declared illegal *per se*, the BOL's position lays the groundwork for a potentially negative response.

Myanmar - Ross Taylor, Counsel

In Myanmar, the only official statement on cryptocurrencies has been an announcement issued by the Central Bank of Myanmar (CBM) on May 3, 2019, which affirms that the CBM is the sole legal issuer and manager of domestic currency; that the CBM does not recognize any cryptocurrency as legal tender in Myanmar; and that the CBM has not given approval to any financial institutions to buy, sell, or exchange cryptocurrencies. Any financial institutions (bank and non-bank) that do not abide by the announcement's provisions may face a variety of administrative sanctions up to and including the revocation of licenses under the Financial Institutions Law (2016), and consumers who buy, sell, or exchange cryptocurrencies do so at their own risk.

Some other regulations are also pertinent here. For example, if buying and selling cryptocurrencies were used to avoid the foreign exchange regime, the party doing so could arguably be prosecuted for conducting a foreign exchange business without a license under the Foreign Exchange Management Law (2012). Similarly, if any such activity was deemed to involve money laundering, the act could be punishable by up to 10 years' imprisonment. As for tax obligations, any profits made from cryptocurrency trading would be taxable in Myanmar as income upon examination by a tax officer.

Thailand - Praew Annez, Consultant

Thailand leads the way as the only country in mainland Southeast Asia to have a regulatory regime for cryptocurrency. The Securities and Exchange Commission (SEC) supervises cryptocurrency-related activities, which are regulated by the 2018 Emergency Decree on Digital Asset Businesses (the "ICO Decree"). This regulates the offering and dealing of "digital assets," including cryptocurrencies and digital tokens.

The ICO Decree also sets requirements for ICO portals and digital asset businesses. An ICO portal is defined as an electronic system provider with the offering of newly issued digital tokens, while digital asset businesses include digital asset exchanges, digital asset brokers, and digital asset dealers. Under the ICO Decree, issuers of digital tokens must register with the SEC and obtain the appropriate approvals. This process includes the submission of a draft prospectus to the SEC.

Additional requirements are set for issuers offering digital tokens to the public. When applying for approval, issuers must submit a registration statement and a draft prospectus, and must issue tokens according to the categories specified under the SEC approval.

The ICO Decree sets a comprehensive structure of offenses subject to criminal sanctions and civil sanctions, which could include civil penalties, financial damages, prohibitions of involvement in cryptocurrency-related activities, and reimbursement of expenses incurred in investigating the offense.

Capital gains from the sale of digital assets are subject to income tax. For VAT purposes, digital assets are regarded as "goods," which are subject to 7% VAT.

Vietnam - Thao Thu Bui, Trainee Lawyer

In Vietnam, cryptocurrencies are commonly referred to as "virtual assets." There are no legal definitions, and a regulatory framework is still lacking. However, cryptocurrencies are strictly prohibited from use as payment instruments in Vietnam.

On August 21, 2017, the prime minister issued Decision 1255 directing the Ministry of Justice, the State Bank, the Ministry of Finance, and the Ministry of Public Security to prepare reports explaining the legal status of "virtual assets" and "virtual currencies" and to recommend the amendment or issuance of relevant legislation. Almost two years later, the reports have either not yet been completed or have not been announced publicly. This delay may indicate that the government has not been able to adopt a clear stand on how to regulate cryptocurrencies in Vietnam.

In the meantime, the prime minister issued Directive 101 on April 11, 2018, after a series of cryptocurrency-related fraudulent activities. This directive ordered:

1. the State Bank to direct credit institutions and intermediate payment providers not to carry out transactions associated with "virtual currencies";
2. the Ministry of Finance to direct securities firms not to engage in issuance, brokerage, and trading of "virtual currencies"; and
3. the Ministry of Public Security to intensify its investigations into acts of mobilizing funds, multi-level marketing, and fraud in relation to "virtual currencies."

Following this directive, the State Bank and the State Securities Commission issued warnings to lower-level banks, securities firms, and public companies not to engage in cryptocurrency-related transactions.

Issuance, provision, or use of illegal payment instruments is subject to an administrative fine of up to VND 400 million (approx. USD 17,094) or imprisonment for 6 to 36 months.

Summary

Although cryptocurrency regulations remain scant across mainland Southeast Asia, a quick comparison of the provisions that are in place shows that the region is not a uniformly welcoming environment for them either. Indeed, the only jurisdiction with a clear regulatory framework—Thailand—is the most expressly hospitable, with other countries issuing tentative warnings and cautionary prohibitions, rather than full regulatory frameworks. 🐼