

WATSON FARLEY
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LEGAL APPROACHES ON ENFORCING DIGITAL ASSETS

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Speaker Introduction



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• **EDUCATION**

2009 · King's College London – LLM in International Business Law

2005 · Certificate of Notarial Services Attorney

2005 · Called to the Lawyer Council of Thailand

2005 · Admitted to the Ordinary Member of the Thai Bar

2002 · Thammasat University – LLB

• **MEMBERSHIPS & ASSOCIATIONS**

- ICC Thailand Arbitration and ADR Committee

- Listed in the Panels of Arbitrators of the Thai Arbitration Institute (TAI)

- Listed in the Panels of Distinguished Arbitrators of the Thai Arbitration Center (THAC)

- Listed in the Panels of Arbitrators of OIC (Office of Insurance Commission)

- Member of the Lawyer Council of Thailand

- Ordinary Member of the Thai Bar Association

• Tossaporn is a Partner in the Dispute Resolution Group. He advises on a wide range of commercial litigation and arbitration matters including maritime, real estate and construction, private equity, insurance, employment and commercial and investment disputes. His client base spans the oil and gas, construction, insurance, commodities trading, transport and real estate sectors.

• He is recommended for international arbitration and insurance by legal directory Legal 500 Asia Pacific.

Could 'Digital Assets' be enforced under Thai law?

- 'Digital Assets' under Thai law
- *Observations on Enforcement*
- *Potential Guideline*

Could ‘Digital Assets’ be enforced under Thai law?

Perspective of ‘Digital Assets’ under Thai law

The Civil and Commercial Code

Section 138

*“Property includes things as well as incorporeal objects, susceptible of having a value and of **being appropriated**.”*

The Emergency Decree on Digital Asset Businesses B.E. 2561 (2018)

Section 3

““digital asset” means cryptocurrency and digital token.”

Section 6

“Section 6. In case where delivery, transfer, holding or return of cryptocurrencies or digital tokens is required, cryptocurrencies or digital tokens of the same category and type and of equal amount shall be fungible.”

Could ‘Digital Assets’ be enforced under Thai law?

Perspective of ‘Digital Assets’ under Thai law

The Emergency Decree on Digital Asset Businesses B.E. 2561 (2018)

Section 31

*“In the case where a digital asset business operator keeps and maintains its **clients’ assets**, it shall prepare and keep account of **clients’ assets** for each client separately from the account of its own and shall segregate the **clients’ assets** from its own and shall not use the **clients’ assets** for any other purposes. These shall be done in accordance with the rules, procedures and conditions as specified in the notification of the SEC.*

*The **clients’ assets** kept in the account of the digital asset business operator shall belong to the clients...*

*When the digital asset **business operator** becomes a debtor under any court’s judgment, is placed under receivership by a court’s order or is ordered by the government or any regulatory body under any other laws to suspend its business either in whole or in part, the provisions of Section 111/1 of the Securities and Exchange Act B.E. 2535 as amended by the Securities and Exchange Act (No. 4) B.E. 2551 shall apply mutatis mutandis”*

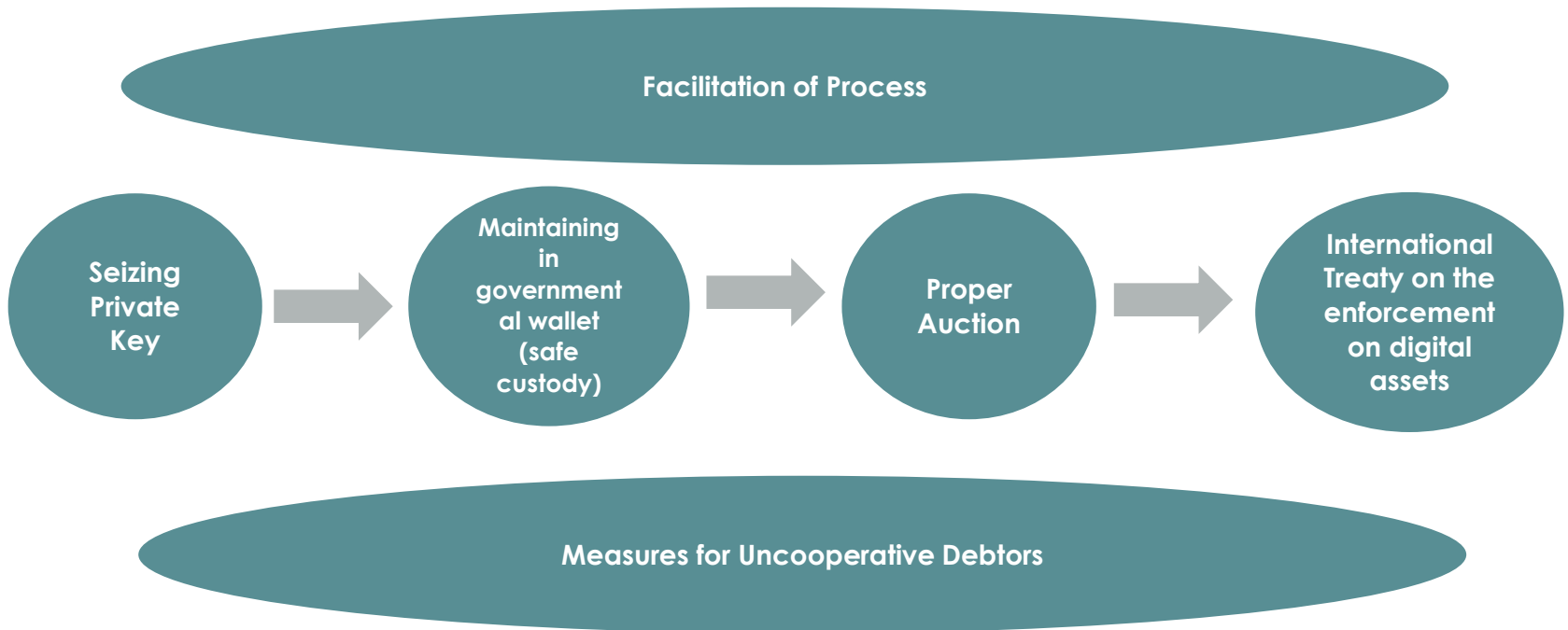
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Observations

1. *Tracing for Digital Assets: Creditor's Burden & Passive Approach*
2. *Complication on application for the enforcement : Specification on the Seizing Assets/Potential Backfire i.e. withdrawal fee*
3. *Extraterritorial concerns*
4. *Debtors' delaying tactics & Reluctance of Seizures : Restriction on seizing asset with value higher than judgement debt*
5. *Retention of seized Digital Assets : Where to keep? Who take control?*
6. *Proceeding of Digital Assets? Auction? When?*
7. *Weak measures against uncooperative Debtors*

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Potential Guidelines for the enforcement proceedings



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