

26 December 2022

THAILAND

Newsletter

Key Contacts



Nuanporn Wechsuwanarux

☎ +66-2-009-5161

✉ nuanporn.w@mhm-global.com



Panupan Udomsuvannakul

☎ +66-2-009-5152

✉ panupan.u@mhm-global.com



Suphakorn Chueabunchai

☎ +66-2-009-5168

✉ suphakorn.c@mhm-global.com



Thanachart Osathanondh

☎ +66-2-009-5151

✉ thanachart.o@mhm-global.com

Digital Platforms to be Regulated in Thailand

On 23 December 2022, the Royal Decree on Operation of Digital Platform Services Which Require Notification ("**Royal Decree**") issued under the Electronic Transaction Act, B.E. 2544 (2001) ("ETA") was published in the Royal Gazette. The Royal Decree shall be effective after 240 days counting from the date of publication in the Royal Gazette, i.e. on 20 August 2023.

Who is regulated?

The Royal Decree mainly focuses on digital platforms aiming to provide their services to consumers in Thailand, regardless of the residency or domicile of the digital platform service provider. A "Digital Platform Service", which would be subject to this Royal Decree, is defined as "A service that provides an electronic medium for managing data and connecting businesses, consumers, or service receivers through computer networks for the purpose of electronic transactions, with or without a service fee. This does not include digital platform services, which are intended to offer goods or services only from the digital platform service operator or its affiliates, whether the offer is made to third parties or affiliates."

What are the thresholds?

As a default rule, the following Digital Platform Services are required to notify the Electronic Transactions Development Agency ("**ETDA**") prior to the commencement of their business and comply with several obligations under the Royal Decree as mentioned below:

- (i) Digital Platform Services with gross income from providing Digital Platform Services in Thailand of more than THB 1.8 million if the business operator is a natural person, or THB 50 million if the business operator is a juristic person; or
- (ii) Digital Platform Services with more than 5,000 monthly users inside Thailand, calculated according to the criteria prescribed by the ETDA.

However, a Digital Platform Service provider which does not fall under the above criteria still needs to notify the brief details of their platform to the authority before commencing their business, and on a yearly basis.

Therefore, all sizes of Digital Platform Services will be regulated under this Royal Decree although the level of obligations differs depending on the size of the platform.

Note that this Royal Decree does not apply to digital platforms, which are regulated by the Bank of Thailand or the Securities and Exchange Commission.

What about overseas operators?

The Royal Decree provides for extraterritorial scope, where the overseas Digital Platform Service provider may be subject to this Royal Decree if the overseas Digital Platform Service provider aims to provide service to consumers in Thailand. If an overseas Digital Platform Services provider meets any of the following conditions, it will be deemed as aiming to provide services to consumers in Thailand:

- (i) the platform being displayed wholly or partially in the Thai language;
- (ii) the platform using a Thai domain name (e.g., ".th" or others which indicate Thailand);
- (iii) the platform accepting Thai currency;
- (iv) Thai law as the governing law for the transactions occurring on the platform, or if there is a requirement that transactions on the platform be under the jurisdiction of the Thai court;
- (v) the overseas Digital Platform Services provider hiring search engine optimization service providers so that the platform will be found by Residents in Thailand specifically ;
- (vi) the platform having the consumer support center (in the form of either office, entity, or personnel) in Thailand; or
- (vii) other criteria to be prescribed.

What duties are imposed on the operator?

- **Notification:** Pursuant to the Royal Decree, the Digital Platform Service providers are required to notify the ETDA prior to the commencement of their business. The existing service providers are also required to notify the ETDA within 90 days after the Royal Decree becomes effective. The process and details in respect to which service provider may notify the ETDA shall be further announced in a subordinate law. However, the Electronic Transaction Committee may provide the exemption for some service providers who are subject to other specific laws.
- **Annual Report:** In addition, the Digital Platform Services provider must prepare an annual report, in the form to be announced by the ETDA, and deliver such report to ETDA within 60 days counting from the last day of the accounting year.
- **Disclosure of Terms and Conditions:** Another important requirement under the Royal Decree is that the ETDA may require some Digital Platform Service providers to inform its users of specific details related to the services for transparency purposes, which may force the affected Digital Platform Services provider to revise its terms and conditions.
- **Appointment of Coordinator:** Under the Royal Decree, the overseas Digital Platform Services provider must appoint, in writing, a coordinator based in Thailand to liaise with the ETDA, provided that such coordinator must not conduct any business activity which is regulated under the Foreign Business Operations Act B.E. 2542 (1999).

What is the penalty for non-compliance?

- **Suspension of Business:** In case of non-compliance under the Royal Decree, the ETDA may order for a suspension of business until such non-compliance has been corrected. Failure to do so within 90 days upon the issuance of such order shall led to a revocation of the notification of such business operator.
- **Criminal Liability:** Failure to notify the ETDA of the operation of a digital service platform or failure to suspend the business in accordance with an order of ETDA may result in an imprisonment of not exceeding one year, a fine of not exceeding THB 100,000, or both. If the violator is a juristic person, the directors, management, and/or other persons responsible for the violation shall also be liable.

CMHM will closely monitor the status of subordinate laws under this Royal Decree and keep you updated when there is any news on the subject. If you would like to discuss the legal ramifications on your business, please feel free to contact the authors listed in the left-hand column.

Contact Us

Chandler MHM Limited
17th and 36th Floors
Sathorn Square Office Tower
98 North Sathorn Road
Silom, Bangrak, Bangkok 10500
Thailand
www.chandlermhm.com

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about ChandlerMHM Limited, please contact bd@mhm-global.com.