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# THAILAND

## Newsletter

### Key Contacts



Panupan Udomsuvannakul

☎ +66-2-009-5152

✉ panupan.u@mhm-global.com



Suphakorn Chueabunchai

☎ +66-2-009-5168

✉ suphakorn.c@mhm-global.com



Theerapat Sombatsatapornkul

☎ +66-2-009-5143

✉ theerapat.s@mhm-global.com



Supakan Nimmanterdwong

☎ 66-2-009-5173

✉ supakan.n@mhm-global.com

## Thailand: Key Notes from the Draft Sub-laws of the Digital Platform Services Regulations

### Introduction

After the Royal Decree on Operation of Digital Platform Services Which Require Notification ("**Royal Decree**") was published last December (more details in [LINK](#)), the Electronic Transactions Development Agency ("**ETDA**") has conducted three public hearings on nine draft subordinate laws (the "**Draft Sub-laws**") focusing on key areas, such as the criteria to determine numbers of users and requirements regarding terms and conditions of a platform. Below is a summary of highlight features from the Draft Sub-laws worth noting before the Royal Decree becomes effective in August this year.

#### 1. Categories of the Digital Platform Services

The main concern for the operators when the Royal Decree was published was about which type of digital platform services would be regulated. In this regard, the Draft Sub-laws provided the draft application form for the notification of the operation of digital platform services ("**Application Form**"). The Application Form includes the list of categories of digital platforms services which include but are not limited to the following platform services:

- |                          |                                    |
|--------------------------|------------------------------------|
| (1) Online marketplace   | (2) Sharing economy platform       |
| (3) Online communication | (4) Social media                   |
| (5) Advertising service  | (6) Audio-visual and music sharing |
| (7) Searching tools      | (8) News aggregators               |
| (9) Maps                 | (10) Web browser                   |
| (11) Virtual assistant   | (12) Operating system              |
| (13) Hosting service     | (14) Cloud service                 |
| (15) Internet service    |                                    |



Thanachart Osathanondh

☎ +66-2-009-5151

✉ thanachart.o@mhm-global.com

The list above is not exhaustive, and the operators need to specify their type of digital platform service if it is not in the list. This could imply that ETDA aims to regulate a broad range of services. Even though it is anticipated that the list would be subject to further amendment after the public hearing process, the service providers whose services are listed in any of the aforementioned digital platform service categories should stay tuned for any further announcements by the ETDA.

## **2. Determining numbers of active users**

One of the key criteria to trigger the notification duty to the ETDA under the Royal Decree is the number of users. The Draft Sub-laws set out a guideline to determine the number of users from the "average monthly active users (AMAU)" which is counted from the number of active unique users of that month. This does not include users that have been linked to the platform without actual activities, or bots. The numbers of active unique users can be tracked from, for instance, IP address, cookies identifier, radio frequency, and device identification.

## **3. Pre-operation notification exemption for certain digital platform services**

According to this notification, a web board and hyperlink/banner service provided by a website or application service provider who only offers goods or services of its own would be exempted from normal notification procedures.

## **4. Requirement for Terms and Conditions**

The digital platform services provider must announce the terms and conditions in Thai prior to or at the time of providing the service. The requirement of the details of such terms and conditions would depend on the fact/features of such platform. For example, if there is a difference in the treatment of products, services, or contents offered in such platform, the explanation of (i) such differences; (ii) the settings that affect the access to products, services, or contents; (iii) the direct or indirect calculation of the service fee; and (iv) the access to certain services, functions, or connection on such digital platform, including the conditions and service fee for such access, must be included in the terms and conditions. Additionally, the digital platform service provider must notify any amendment to the terms and conditions to ETDA and affected users.

## **5. Termination of Services**

A service provider must inform the cessation of its digital platform service business to ETDA in advance. The timeline and details of the notification would depend on the type of business. This includes, for example, basic information about the service provider, the name of the platform, remedy measures for users, and other general information about the cessation.

A service provider is also required to inform users of the cessation, including information such as the message in Thai, transitional service for users, cessation date, and contact information.

## Key takeaways

In addition to the above Draft Sub-laws, the next public hearing will be held for two draft subordinate laws. The topics are expected to include details of approval marks and guidelines on the registration of users and sellers for digital platform services.

In any case, the Draft Sub-laws are provided for the purpose of the public hearing process. Therefore, it is important to note that the above details of each subordinate law may be changed. CMHM will closely monitor the status of subordinate laws under the Royal Decree and keep you updated on this 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  
17<sup>th</sup> and 36<sup>th</sup> Floors  
Sathorn Square Office Tower  
98 North Sathorn Road  
Silom, Bangrak, Bangkok 10500  
Thailand  
[www.chandlermhm.com](http://www.chandlermhm.com)

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