

Objective and Rationale

Supplemental to the Draft Royal Decree re: Supervision of digital service platforms that must be notified

B.E. ...

Objective

So that there is a regulation on the supervision of digital service platforms that must be notified

Rationale

At present, digital technology facilitates daily lives of the public and accommodates the changing way of life. There are more digital platform service providers across businesses of different types and characteristics. This has made digital service platforms more important to the economic and social systems. Thus, as a mechanism for driving policies on the development of the national digital economy, and the promotion of the development and synchronization of standards or regulations on the use of digital technology. Thus, it is necessary to regulate the digital platform business by defining the parameters of businesses that need to be notified by connecting information and coordinating among relevant agencies; prescribing rules on certain ways or types of operating the digital platform business, to ensure that such operations are transparent and fair so as to create trust in service provision and appropriately protect users (including consumers and firms operating on the digital platform), and rules in operating a digital platform business for large platforms or platforms with unique features; as well as prescribing the promoting and encouraging the production of best practice guidelines or appropriate self-supervision mechanisms which are compliant with the relevant laws to supplement the effective enforcement of current laws. In addition, regulation of platform business would enhance the efficacy of protecting the rights of the relevant persons, especially for consumers where digital platform service providers are outside Thailand.

Draft Royal Decree

re: Supervision of digital service platforms that must be notified

B.E. ...

.....

It is appropriate to have a regulation on the supervision of digital service platforms that must be notified

By the power prescribed under section 175 of the Constitution of Thailand, and section 32 paragraphs one and three and section 33 paragraph one of the Electronics Transactions Act 2001 (as amended by the Electronics Transactions Act (No. 3) 2019) — an act containing certain provisions that restrict the rights and freedom of persons, which, under sections 26 and 40 of the Constitution of Thailand, can only be imposed with explicit power granted under the law, this Royal Decree is enacted.

The reason for the restriction of rights and liberty of persons under this Royal Decree is to ensure transparent and fair operations of the digital service platform business that allows the effective supervision of the state which constitutes protection for users and public interests. The promulgation of this Royal Decree is compliant with the conditions enshrined in section 26 of the Constitution of Thailand.

Section 1: This Royal Decree is called the "Royal Decree re: Supervision of digital platform services that must be notified, B.E...".

Section 2: This Royal Decree shall be effective from the 180th day after its promulgation in the Royal Gazette.

Section 3: In this Royal Decree,

"Digital Service Platform" means the provision of digital service platform as a medium where Operators on the Platform and Consumers are connected through a computer network.

"Firm" means a service provider that has completed notification in accordance with this Royal Decree.

"Operator on the Platform" means an individual, carrying on a commercial or professional act, or a juristic person offering products, services, or assets, to Consumers through the Digital Service Platform with a commercial, business, handicraft, or professional objective, regardless of whether the Operator on the Platform or the Consumer is a member of or has an account on such platform. Moreover, a Digital Service Platform may have more than one Operator on the Platform.

"Consumer" means the purchaser or the receiver of services from the Digital Service Platform provider or the person that is offered or solicited by the Digital Service Platform provider to purchase products or services or to consume assets, including the person that, rightfully, uses a product or a person that receives a service, or a person that consumes an asset from the Digital Service Platform Operator despite not paying consideration. Consumers do not include Operators on the Platform.

"Platform Client" means an individual or a juristic person that uses the Digital Service Platform, including an Operator on the Platform and a Consumer.

"Agency" means the Electronic Transactions Development Agency.

"Committee" means the Electronic Transaction Committee under the laws on electronic transactions.

"Officer" means the Director of the Agency..., or a person whom the Director of the Electronic Transactions Development Agency...appoints to perform duties under this Royal Decree.

"Minister" means the acting minister under this Royal Decree.

Section 4: The Agency of Electronic Transactions Development is responsible for supervising the Digital Service Platform business which must be notified under this Royal Decree.

Section 5: The minister of the Digital Economy and Society is the acting minister for this Royal Decree.

Part 1

Doing Digital Service Platform Business

Section 6: Any person carrying out a Digital Service Platform business must comply with this Royal Decree, and the announcements of the Committee or the Agency.

Section 7: Digital Service Platform is a service that must be notified to the Agency prior to business commencement.

Section 8: The following Digital Service Platforms are exempted from an obligation to be notified to the Agency:

- (1) Digital Service Platforms which are deemed notified to the Agency, provided there is another supervising regulator, as prescribed by the Committee;
- (2) any other Digital Service Platform prescribed by the Committee.

Section 9: This Royal Decree applies to any Digital Service Platform business that has an objective of servicing users in Thailand, whether the Digital Service Platform provider is in Thailand or outside Thailand.

If the Digital Service Platform provider is outside Thailand, such provider shall be deemed to have an objective of servicing Consumers in Thailand if the Digital Service Platform has any one of the following characteristics.

- (1) Digital Service Platform that uses Thai language in all or some parts of its display results.
- (2) Digital Service Platform that is registered with a domain name ".th" or ".ไทย" or using another name that means Thailand, or using a Thai domain name.
- (3) Digital Service Platform that uses or allows the use of Thai Baht currency for payment.

- (4) Digital Service Platform for which Thai law is agreed to be the law governing the sale and purchase transaction that is executed on the Digital Service Platform.
- (5) Digital Service Platform where service providers are compensated for tracing IP addresses to specifically enable Consumers to have access to the Digital Service Platform for Thai users.
- (6) Digital Service Platform that has an office, an agency, or personnel that support or assist users of the Digital Service Platform in Thailand.
- (7) Digital Service Platform with any other characteristic as prescribed by the Committee.

Section 10: Any Firm falling under Section 9 paragraph 2 must appoint a representative in writing. The representative must be in Thailand, and must be authorized to act on behalf of the Firm without any restriction on liabilities relating to the provision of Digital Service Platform under this Royal Decree.

Section 11: Any person wishing to engage in the business must submit a notification electronically.

The rules, procedures, and notification form shall be as prescribed by the Committee.

For the benefits of supervising the provision of Digital Service Platform of each type of Firms, the Agency may require the persons wishing to engage in the business to submit documents in addition to those prescribed by the Committee under paragraph two.

Section 12: Once the Officer has received the notification form, as well as the documents under Section 11, the Officer shall electronically issue a receipt on the date of notification as evidence of the notification. The person submitting the notification is allowed to commence the Digital Service Platform business from the date on which it receives such receipt.

If it is found that notification is inaccurate or incomplete under Section 11, the Officer will have the power to order that the submission be rectified to be accurate or complete, as the case may be, within the prescribed period.

If the Firm does not rectify or comply with the Officer's order within the time prescribed in paragraph two, the Officer shall order the Firm to stop providing Digital Service Platform from the lapse of the period specified in paragraph two until the submission is rectified to be accurate or complete per the Officer's order.

If the person that submitted the notification does not rectify under paragraph three within 90 days from the date on which it stopped providing Digital Service Platform services, the Officer shall withdraw the person's submission from the notification register, and promptly notify the person in writing.

Section 13: The Agency must arrange for a notification register for the benefits of performing duties under this Royal Decree, and must arrange to have electronic channels for disclosing information through which the public could verify the names and status of the Firms that have received a notification receipt and those whose notification has been withdrawn from the notification register, as well as the actions of the Firms under Section 18.

The Agency, with approval from the Committee, must additionally prescribe information on Firms that can disclose to the public through electronic means.

Section 14: The Agency must prescribe the rules, procedures, and marks of certification or any similar text which Firms receiving the notification can display or publicize.

Section 15: If, for the benefits of performing the duties under the scope of authority and duty prescribed by law of any one agency, it is necessary to request information that the Agency has from the notification forms or the electronic notification register, the Agency must seek consent from the Committee on a case-by-case basis.

Section 16: If the Agency needs to use information which any government agency has requested or collected from the Digital Service Platform provider, whether by law or under a contract, the Agency can request such government agency to provide, disclose, or connect the Agency with such information, so as to facilitate Firms. In this case such government agency shall connect the Agency with the information it has promptly.

Part 2

Supervising the Digital Service Platform Business

Section 17: Each year, a Firm must electronically submit a letter notifying the size of its business using the form prescribed by the Agency within 30 days from the last day of the accounting year.

Section 18: The Agency has the authority to prescribe the characteristics or types of Digital Service Platforms in which case Firms must clearly and appropriately notify Platform Clients of the necessary rules and details before or while using the service.

The rules and details referred to in paragraph one must be prescribed as appropriate for the benefits of promoting transparency and fairness in service provision, and must at least be contained in the terms and conditions for service provision. Changes to the terms and conditions for service provision must be notified within an appropriate timeframe. The terms and conditions may include the following:

- (1) conditions for service provision, cessation or termination of services, calculation of fees, consideration, service fees, and expenses relating to service provision;
- (2) rules for the order in which products or services are listed or recommended in the Digital Service Platform, or rules that are used in offering product or service advertisements to Platform Clients;
- (3) systems for satisfaction assessment and comments of Platform Clients;
- (4) access to and use of information that Firms receive from providing Digital Service Platform;
- (5) inquiries, complaints, and dispute resolutions, including the timeframe for resolving disputes;
- (6) actions to be taken for content that may violate the law or categorizing the appropriateness of content;
- (7) any other topics as appropriate.

The Agency may announce the appropriate timeframe for actions to be taken by Firms in paragraph one.

Firms in paragraph one must electronically submit a report on actions that have been taken pursuant to this Section in the form prescribed by the Agency.

Section 19: The Agency, with approval from the Committee, shall prescribe which Digital Service Platforms are large Digital Service Platform or Digital Platform Service with unique features, which may or may not identify specific Digital Service Platforms, by prescribing specific rules and conditions for large Digital Service Platforms or Digital Platform Service with unique features.

Firms may propose that the Agency cancel prescribing any identified specific Digital Service Platforms a large Digital Service Platform or Digital Platform Service with unique features. If the Committee agrees, it shall order such cancellation.

Section 20: If any Firm wishes to stop operating a Digital Service Platform business, it must electronically notify the Agency at least 60 days before ceasing services.

Section 21: When the Agency has received a notice specifying an intention to cease business under Section 19 or if it discovers a reason to withdraw the notification under Section 22 paragraph two, the Agency will have the power to order the Firm to do any act to protect or prevent damages which may occur to Consumers or Operators on the Digital Service Platform before ceasing business or withdrawing notification, provided that this is in accordance with the rules, procedures and conditions prescribed by the Agency.

Section 22: For the benefits of supervising the Digital Service Platform business and its compliance with this Royal Decree, the Officers will have the duties and authority prescribed in Section 34/2 of the Electronic Transactions Act 2001 (as amended).

Section 23: The provisions in Part 2 shall apply to representatives of Firms under Section 9 paragraph two by analogy.

Part 3

Prohibition from Conducting Business

Section 24: If a Firm violates or does not comply with the rules prescribed in this Royal Decree and the announcements of the Committee and the Agency, the Officer shall prohibit such Firm from providing Digital Service Platform until it complies fully with the said rules.

If the Firm does not comply with the first paragraph within 90 days from the date of the prohibition, the Officer shall withdraw the Firm's notification from the notification register, and electronically notify such Firm promptly.

Part 4

Review and Cooperation with Government Agencies

Section 25: The Agency has the duty to promote and encourage Firms to have good codes of conduct or appropriate self-regulating mechanisms, which may include identification and verification of Platform Clients that is appropriate to the risks of the services derived from risk assessment to create credibility for electronic transactions, as well as prescribing measures to promote a good and acceptable mutual understanding between Firms and Platform Clients, and/or governmental agencies as applicable.

The Agency may seek cooperation from Firms that are not within the ambit of Section 18 paragraph one and Section 19 in improving the transparency and fairness of their Digital Service Platforms.

Section 26: The Agency shall arrange for a central electronic channel for complaints through which Platform Clients can submit their complaints from using services provided by small Digital

Service Platforms, and must report results to the Committee annually.

Section 27: Firms must provide cooperation upon receiving a management order or a court order to comply with this Royal Decree and other laws.

Section 28: The Agency, with approval from the Committee, may seek cooperation from the relevant agencies to act within their scope of duties and powers, including but not limited to prosecuting Digital Service Platform providers whose notification is withdrawn under Section 24 paragraph two or any person that operates a Digital Service Platform without notifying the Agency under Section 7, as well as Platform Clients.

Section 29: Where Digital Service Platforms acts in contravention of transparency and fairness or in violation of competition law, the Agency and the Office of Trade Competition Commission must cooperate.

Transitional Provisions

Section 30: Any person that operates a Digital Service Platform business before this Royal Decree is effective must comply with this Royal Decree within 30 days from the date that this Royal Decree is effective.

If the Digital Service Platform in paragraph one wishes to operate a Digital Service Platform under this Royal Decree after the lapse of the period in paragraph one, it shall notify the Agency before the lapse of the period in paragraph one.

