

Draft **ROYAL DECREE ON THE SUPERVISION OF DIGITAL PLATFORM SERVICES Subjected to Prior Notification B.E. ...**

Thursday 10th March 2022

9.00-12.30 Thai & English versions



DRAFT ROYAL DECREE ON THE SUPERVISION
OF DIGITAL PLATFORM SERVICES
SUBJECTED TO PRIOR NOTIFICATION B.E. ...

QR Code for accessing
the Council of State's
Law Portal to submit
comments on the Draft
Royal Decree



Current Status

The draft of the Royal Decree passed the 1st phase of the consideration by the Council of State

-  The revised version of the Royal Decree will be undergoing the public hearing process **from 10 - 25 March 2022 by 5 pm (Bangkok Local Time)**

Next Step

Gather the comments from the public hearing to present to the Council of State for the 2nd phase of the consideration

Circulate the draft of the Royal Decree to relevant government agencies to confirm the draft

Propose the draft of the Royal Decree to the Secretariat of the Cabinet (SOC)



Propose the draft to His Majesty the King for his approval and publish the Royal Decree in the Government Gazette

The Overview of the Draft Royal Decree

General Provisions

- Legal title*
- The date this Royal Decree comes into force*
- Exemptions*
- To be the main regulation**
- Definitions*
- The person who has responsibility and control for the execution of the Royal Decree
- To mainly commit any acts via electronic means**

* Revised or prescribed matters to be more perspicuous

** Added matters

Remark: Compared to the version proposed to the Cabinet

Chapter 1 The Operation of Digital Platform Services

- Required Digital Platforms to notify before operating the business*
- Digital Platform Operators operating outside of Thailand and the obligation to appoint Point of Contact (PoC) in Thailand*
- Required information to be notified**
- The issuance of the notification receipt, the order for correcting and the cancellation of the notification receipt*
- The notification registry and the electronic channel for disseminating information about Digital Platform Operators

Chapter 2 The Rule for Operation of Digital Platform Services and Supervision

- Annual information update and notification of changes*
- The characteristics and obligations of Digital Platform required to notify of the terms and conditions to Users*
- The characteristics and obligations of Large Digital Platform and Specified Digital Platform* and certification marks*
- Annual review of Large Digital Platform and Specified Digital Platform and their additional obligations*
- The relief measures and redress or remedy**
- Notification of business cessation*
- Requiring the agency to provide the central channels for receiving complaints* and promote self-regulation practice

The Overview of the Draft Royal Decree

Chapter 3

Revocation of the Notification for business operation

Chapter 4 Cooperation between government agencies and regulators

- Joint Committee and its duties as well as authorities**
- Information exchange
- Request for cooperation from government agencies and regulators to act according to their duties and authorities*

Chapter 5 Appeal against Administrative Act

- Filing an appeal against the administrative order to ETDA director or the Electronic Transactions Commission (ETC)**
- Appeal period
- Consideration of an appeal

Transitory Provisions

- Digital Platform Operators that have operated prior to the date this Royal Decree comes into force and wishes to continue the operation shall notify ETDA within 90 days*
- If such Digital Platform Operators wishes to cease the business operation within 1 year from the date this Royal Decree comes into force, the Digital Platform Operator shall notify the cessation to ETDA within 90 days**

* Revised or prescribed matters to be more perspicuous

** Added matters

Remark: Compared to the version proposed to the Cabinet

“Digital Platform Services”

S.3 + S.4

Provide the scope of the notification scheme prescribed by this decree.

S.5 (Definition of “Digital Platform Services”)

“The provision of electronic **intermediation** services that manage information **with a purpose to create connection**, by using computer networks, between **Business Users, Consumers** or other **Users** in order to create electronic transactions, with or without any remuneration.”

(Adjusted for a more comprehensive definition)

Definition of "Digital Platform Services"

- Examples
Digital Platform Services that fall in the scope
- Online Marketplace
 - Ride Sharing
 - Labor Sharing
 - Online Search Engine
 - Space Sharing



Digital Platform Operators

Provide Digital Platform Services

Digital Platform Services

The provision of electronic **intermediation** with a purpose to create connection between **Business Users**, **Consumers** or other **Users**

Have demands to purchase goods or receive services from Business Users

Receive the offer or invitation from Business Users to purchase goods or receive services

Offer goods or services on Digital Platform Services



Business Users



Consumers

Payment Service

Form Electronic Transactions either on or off Digital Platform Services



Users

Natural person or juristic person

"Characters of Digital Platform Services"

S.8 Digital Platform Services with these characteristics shall **notify ETDA prior to business operation**

1. Natural person:
Have gross income from providing services within Thailand **exceeding 1.8 million Baht/year**
2. Juristic person:
Have gross income from providing services within Thailand **exceeding 50 million Baht/year**
3. Have average Monthly Active Users **exceeding 5,000 users**

1. Digital Platform Services

2. S.15

3. S.17

General

S.11 Notify ETDA with required information

S.14 Update the information annually and notify of any changes

S.22 Have measure to remedy users who have been affected from the damage

S.16 Notify the users of required terms and conditions (T&C)/ notify ETDA and the users of any changes / submit the report annually

S.22 P.2 Include details of procedure and measures to remedy users who have been affected from the damage in T&C

S.18+ } Conduct risk assessment +
S.19 } provide risk management measures
S.20 }

S.22 P.2 Include detail of procedures and measures to remedy users who have been affected by the damage in T&C

(More details included to ensure clear operations)

“Characters of the Digital Service Platform”

**include Foreign Digital Platform Operators
+ provide services to the Users in Thailand**

S. 9 The Digital Platform Service having the following characteristics **shall notify ETDA prior to business operation**

- Display in Thai language*
- Register the domain name using “.th” or “.ไทย”
- Allow the users to make payment in Thai Baht*
- Have Thai laws as a governing law of the transaction
- Make payment to a search engine operator in order to facilitate the Users in Thailand to specifically reach the services of the Digital Platform Service
- Establish an office, unit, or personnel for providing support to Users in Thailand
- Other characteristics as stipulated by the Electronic Transactions Commission

S. 10
Designate a Point of Contact in Thailand

(Adjusted for more comprehensive details)

“Characters of Digital Platform Services”

under the supervision of specific regulators

S. 3 The Royal Decree shall not regulate the Digital Platform Services regulated by BOT and SEC under the relevant and applicable laws

S. 4 Regulating according to specific laws

S. 8 Low-Risk
Para. 2 Digital Platform Services

S. 8 Small Digital Platform Operators
Para. 3

There must be regulations that guarantee transparency and fairness, and have standards not lower than those specified **(Reduction of redundancy in regulations)**

Notify the brief information required prior to the platform operation and update some information annually

Not subject to obligations according to Chapter 2

Overview of the Supervisions under the Draft Royal Decree

Scope

“Digital Platform Services” (S.5)

Digital Platform Operators who operate business in Thailand or provide service to Users in Thailand

Not provide Digital Platform Services to Users in Thailand

Digital Platform Services that are **subject to the Supervisions of the SEC and BOT***

Government Digital Platform Services*

- 1) does not directly relate to commercial matters or
 - 2) is not profit-seeking platform
- and have already notified ETDA with the specified information**

There is a law providing specific regulation*

Obligations

General Digital Platform Services (S.8 Para.1)

- 1. Natural person who has gross income from providing services within Thailand **exceeding 1.8 million Baht/year**
- 2. Juristic person who has gross income from providing services within Thailand **exceeding 50 million Baht/year**
- 3. Have average Monthly Active Users **exceeding 5,000 Users**

Low-Risk Digital Platform Services / Small Digital Platform Operators (S.8 Para.2, 3)

- 1. Natural person who has gross income from providing services within Thailand **not exceeding 1.8 million Baht/year**
- 2. Juristic person who has gross income from providing services within Thailand **not exceeding 50 million Baht/year**
- 3. Have average Monthly Active Users **not exceeding 5,000 Users**

Designate the Point of Contact in Thailand (S.10)**

Notify the information under S. 11

Subject to the obligations under Chapter 2

Notify the brief information***

Shall not subject to Chapter 2 but required to update certain information****

***Shall subject to regulations that provide assurance of transparency and fairness or having standards of conducting Digital Platform Services not lower than those provided in this Royal Decree**

**** If the Digital Platform Operator is outside Thailand but provide service to Users in Thailand (S.9)**

***** Information with respect to the Digital Platform Operator, name and category of the Digital Platform Service, a channel for providing the Digital Platform Service, and the information of the Point of Contact**

****** Transaction value, incomes before any deductions from providing Digital Platform Service in Thailand, and the number of Users**

S.11 Notification of Required Information

(1) Information related to the Digital Platform Operator

- (a) Full name or name of the juristic person
- (b) Citizen ID number or corporate registration number
- (c) Address
- (d) Fiscal year
- (e) Contact information

(2) Information related to the Digital Platform Service

- (a) Name of the Digital Platform Service
- (b) Category(s) of the Digital Platform Service(s)
- (c) Channels for providing the Service e.g. URL or application
- (d) The value of transactions made on the Digital Platform Service (if any)
- (e) Gross income from providing Digital Platform Service in Thailand (if any)
- (f) Proportion of income from operating Digital Platform Service in Thailand to the total income of the Digital Platform Services operated by the Operator

(3) Information related to Digital Platform Service Users

(if any)

- (a) Number of Users
- (b) Category of Users
- (c) Number of relevant service providers on the Digital Platform Service

(4) Information related to complaints

- (a) Number and type of complaints (if any)
- (b) Complaint Management and Dispute Resolution

(5) Information related to the Point of Contact in Thailand

Electronic Transactions Committee may require further information which is not Trade Secret



Prior to business operation



Annually

60 days from the end of the fiscal year



When there is any changes in the given information



Prior to business operation

- **Low-Risk Digital Platform Services**



Annually

60 days from the end of the fiscal year

- **Small Digital Platform Operators**

(More details included to ensure clear operations)

Disclaimer: This document is intended solely for the information sharing regarding the Draft Royal Decree on the Supervision of Digital Platform Services Subjected to Prior Notification B.E. ... which is still undergoing the technical examination by the Council of State. Therefore, do not use the information contained in this document as references since it may be modified in the future.

Notification of Business Operation under the Royal Decree

**General Digital Service Platform
(S.8 Para.1)**

**Low Risk (S.8 Para.2) /
Small Digital Platform
Operators (S.8 Para.3)**

Government Digital Platform Services

Notify required information under S.11

Notify required information under S.11 (1), (2) (a)-(c) and (5)

**(1) Information related
to the Digital Platform
Operator**

- (a) Full name or name of the juristic person
- (b) Citizen ID number or corporate registration number
- (c) Address
- (d) Fiscal year
- (e) Contact information

**(2) Information related
to the Digital Platform
Service**

- (a) Name of the Digital Platform Service
- (b) Category(s) of the Digital Platform Service(s)
- (c) Channels for providing the Service e.g. URL or application
- (d) The value of transactions made on the Digital Platform Service (if any)
- (e) Gross income from providing Digital Platform Service in Thailand (if any)
- (f) Proportion of income from operating Digital Platform Service in Thailand to the total income of the Digital Platform Services operated by the Operator

**(3) Information related
to Digital Platform
Service Users (if any)**

- (a) Number of Users
- (b) Category of Users
- (c) Number of relevant service providers on the Digital Platform Service

**(4) Information related
to complaints**

- (a) Number and type of complaints (if any)
- (b) Complaint Management and Dispute Resolution

(5) Information related to the Point of Contact in Thailand

**Shall not subject to
Chapter 2
but required to update
certain information
under S.11 (1), (2) (a)-(e)
(3) (a) and (5)
on an annual basis**

Notifying terms and conditions of the services for the required items

S.15 Characteristics

1. Online Intermediation Services

- (a) Provide services to the Users, at distance, for remuneration
- (b) Be an intermediary for offering goods or services to consumers, irrespective of where the transactions are wholly or partly concluded on the platform and
- (c) Have a contractual relationship with the Digital Platform Operator on the platform

2. Online Search Engines

S.16 List of the terms and conditions under to be notified

- 1) Terms and conditions for providing, suspending, terminating services and remuneration Notify when changed
- 2) Ranking Submit the report annually
- 3) Advertising
- 4) Review
- 5) Accessibility and utilization of information ETDA shall publish the report to the public
- 6) Queries and complaints
- 7) Procedures against illegal contents and viewer's rating

(To provide additional details for clearer understanding)

S.17 Large and Specified Digital Platform Services

Characteristics

(1) Large Digital Platform Services

- 1) Have income from providing services in Thailand
 - For each service, exceeding 300 million Baht/year or
 - For all services, exceeding 1,000 million Baht/year
- 2) Have more than 7 million Monthly Active Users or 10% of the population

Additional Obligations

- Conduct risk assessment + provide risk management measures
- Provide system security measures
- Provide crisis management plan
- Appoint a Compliance Officer
- An audit by Independent Auditor

(2) High-Risk Specified Digital Platform Services

(3) Specified Digital Platform Services on Critical Sectors

Additional Obligations

- Conduct risk assessment
- Provide risk management measures

S.21 Review by the Electronic Transactions Commission annually

S.23 EDTA may issue certification mark (More comprehensive characteristics and clearer operational details)

Obligations under Chapter 2 : The Rule for Operation of Digital Platform Services and Supervision

General Digital Platform Services (S.5)

Online Intermediation Services + Online Search Engines (S.15)

Large and Specified Digital Platform Services (S.17)

Large Digital Platform Services (S.17(1))

High-Risk Specified Digital Platform Services (S.17(2))

Specified Digital Platform Services on Critical Sectors (S.17(3))

Shall annually provide updated information given to ETDA (S. 12) and notify of any changes within 30 days (S. 14)

- 1) Terms and conditions for providing, suspending, terminating services and for remuneration
- 2) Ranking
- 3) Advertising
- 4) Review
- 5) Accessibility and utilization of information
- 6) Queries and complaints
- 7) Procedures against illegal contents and rating

- Clearly and appropriately notify the terms and conditions of the services to the Users before or at the use of services
- Inform any changes of T&C to ETDA and the Users
- Provide annual report on the subject (S.16)

- Conduct a risk assessment + provide risk management measures

- Provide system security measures
- Provide crisis management plan
- Appoint a Compliance Officer
- Audit by Independent Auditor

Provide the Relief measures and indemnification or remedy for damage during the conducting of the business (S.22 Para.1)

Provide the Relief measures and indemnification or remedy for damage during the conducting of the business in addition to the general Digital Platform Services (S.22 Para.2)

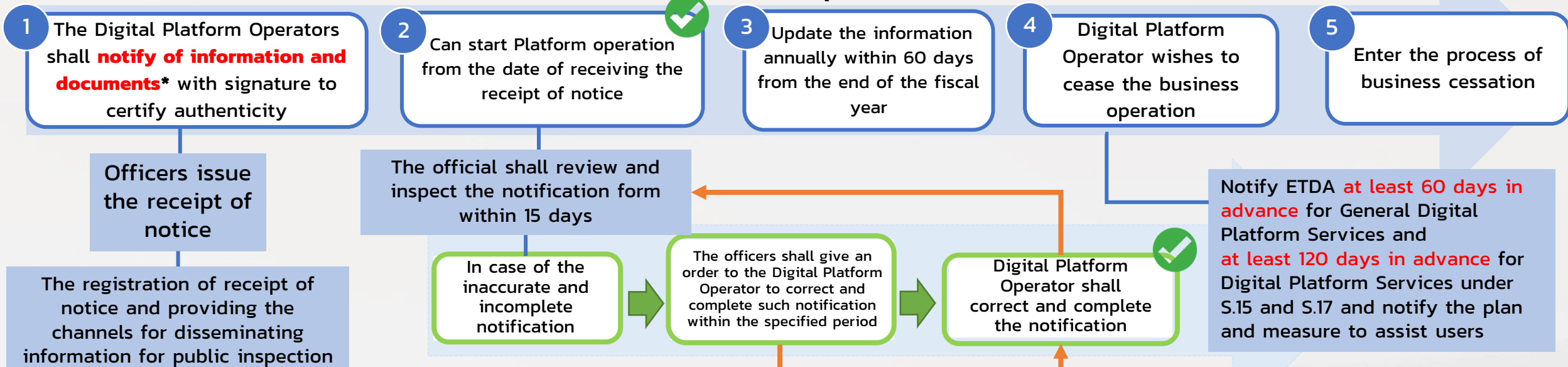
- Notify a business cessation at least 60 days before the date of cessation (S. 24 Para.1) and
- Announce the business cessation to the Users (S. 24 Para. 4)

- Notify a business cessation at least 120 days before the date of cessation (S.24 Para.2) and deliver a plan and measures enabling Users to obtain redress after the business cessation to ETDA and
- Announce the business cessation and the plan to the Users (S.24 Para.4)

The Procedures for Notification, Cancellation and Business Cessation under the Draft Royal Decree

Prior to business operation

During business operation



**** Information under Section 11**

1. Information concerning the person who intends to operate the business
2. Information concerning Digital Services Platform
3. Information concerning Digital Services Platform users
4. Information concerning complaints
5. Information concerning a Point of Contact in Thailand in the event that the Digital Platform Operator operates business outside of Thailand.

The Electronic Transactions Commission may issue a notice requiring the person who intends to operate the Digital Platform Services business to provide additional non-trade secret information.

Penalties (S.44 of the Electronic Transactions Act)

Failing to notify or violate the prohibition order to operate business shall be liable to not more than 1 year of imprisonment, or a fine of not more than 100,000 Baht, or both.

Digital Platform Operator do not comply with the Rule for Operation of Digital Platform Services (Chapter 2) and Notification of the Electronic Transactions Commission

The officers shall give an order to the Digital Platform Operator to temporarily stop business operations from the end of the specified period until completion or correction according to the notification as of official's order

Digital Platform Operator does not correct or comply with an order within 90 days from the date of the order to stop business operations

The officers shall cancel the receipt of notice from the registration of receipt of notice and notify the Digital Platform Operator

Process of business cessation

S.24 General

Shall notify ETDA at least 60 days prior to the date of cessation

S.25 Digital Platform Services under S.15 and S.17

Shall notify ETDA at least 120 days prior to the date of cessation and shall comply with the conditions submitted prior to issuing the receipt of business cessation

S.26 Deem to be ceased after issuing the receipt of business cessation

Transitory Provisions

S.39

In case that Digital Platform Operator has operated prior to the date this Royal Decree comes into force

If the Digital Platform Operator **wishes to cease the platform operation within 1 year** from the date this Royal Decree comes into force, such Digital Platform Operator shall **notify the cessation to ETDA within 90 days** from the date this Royal Decree comes into force

Relief measures and indemnification or remedy for damage

S.22 During Platform operations

▪ General Digital Platform Services

- 1) Provide a complaint management process
- 2) Provide user support channel

▪ Digital Platform Services under S.15 and S.17

must include the following measures in terms and conditions of service

- 1) Procedure and measure to assist users who have been affected by the damage
- 2) Procedure for indemnification or remedy for damage and progress update with the users
- 3) Summary of the insurance contract (if any)

S.24+25 before a business cessation

- 1) Notify ETDA at least 60 days prior to the expected cessation date
- 2) Announce the business cessation

- 1) Notify ETDA at least 120 days prior to the expected cessation date
- 2) Announce the business cessation to users
- 3) Inform ETDA and users of the plans and measures for assisting users after the business cessation

Additional mechanism

Joint Committee

S.30 Quorum

S.31 Duties and authorities

Provide feedbacks, advices, and guidelines, consider and make decisions on transparency and fairness regulations, or standards that are not less strict than those provided in this Royal Decree

Chapter 5 Appeal against Administrative Act

- In the case of an administrative order of a competent officer, appeal to the ETDA director
- In the case of an administrative order of the ETDA director, appeal to the ETC
- Appeal duration of 30 days since the day that the administrative order was received or the day that an order was noticed or should have been noticed

(For coordination between regulators)

(For clear appeal process)

Facilitation and efficiency improvement

Facilitate the Digital Platform Operators

S.27 Require ETDA to provide the **main channel for receiving complaints**

S.33 **Link information with other government**

S.34 **agencies and regulators to reduce repetitive information requests**

Improve legal enforcement mechanisms

S.28 Promote and assist Digital Platform Operators in developing **Best-practice** or **Self-regulation** by issuing Guidelines to accommodate the Digital Platform Operators

S.35 Request supports from related government agencies or relevant committees to act according to their duties and authority

Effective date and transitory provisions

S.2 **Effective period of 240 days** from the date of its publication in the Government Gazette

S.39 **Digital Platform Operator that has operated prior to the date this Royal Decree comes into force shall notify ETDA within 90 days from the date this Royal Decree comes into force and is allowed to operate in the meantime**

(Extend effective period and transitory provision)

Thank You



**QR Code and Link
for accessing the Council of State's Law Portal
to submit comments on the Draft Royal Decree**
https://www.law.go.th/listeningDetail?survey_id=NTkwREdBX0xBV19GUk90VEVORA==