



Legal News Update

KPMG in Thailand



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With an increasing number of transactions being made online, many providers of digital platforms are entrusted with having a system in place to ensure financial security, credibility, and reliability. Consequent to the Royal Decree on the Operation of Digital Platform Service Businesses that are Subject to Prior Notification, B.E. 2565 (2022) (the “**Royal Decree**”) by virtue of the Electronic Transaction Act, B.E. 2544 (2001) as amended (the “**Act**”) on 21 August 2023 coming into effect, an operator of a digital platform service must notify the Electronic Transactions Development Agency (“**ETDA**”) prior to the commencement of business, and thereafter, annually update the information of their platform. This requirement also applies to foreign operators providing service to users in Thailand.

Who must comply with the notification?

Any business operator who has a “Digital Platform Service” which provides electronic intermediary services that manage data to facilitate connections between users for the conclusion of electronic transactions — including those involving the online marketplace, sharing economy, online communication, social media, advertising, audio-visual and music sharing, search tools, maps, virtual assistants, or cloud service — must comply with the Royal Decree.

Note:

- For a foreign operator that provides services to users in Thailand meeting the above criteria, a representative in Thailand must be appointed to perform duties and coordinate with the ETDA and other related agencies.
- A digital platform service may be exempted from this Royal Decree if it does not act as an intermediary or if it is in a specific sector which has to comply with specific rules and regulations e.g. the regulations of the Bank of Thailand (BOT) or the Office of the Securities and Exchange Commission (SEC) in accordance with the prescription of the Electronic Transaction Commission.

Deadlines and types of notifications

| Types of notifications | Information to be submitted | Deadline for notification |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1) Before business operation | General information is required about the digital platform, (i.e. name, address, details of services or products of digital platform operator, URL, application etc.) | Before the commencement of business |

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| <p>2) During business operation</p> | <p>2.1 Annual notification</p> <p>All digital platform operators are required to submit the annual notification.</p> <p>Additional information is required for a digital platform service that meets one of the following criteria:</p> <p>(1) Annual gross revenue</p> <ul style="list-style-type: none"> • For a natural person, more than THB1.8 million per year • For a juristic person, more than THB50 million per year <p>(2) Platform users - more than 5,000 users per month</p> <p>2.2 Terms & Conditions (T&C) notification</p> <p>A digital platform service provider that meets all of the following requirements may be required to notify its users and the ETDA of its T&C:</p> <p>(1) a digital platform service that (i) charges a fee to its users, (ii) acts as an intermediary in offering goods or services, whether the transactions take place in whole or in part on the platform, and (iii) has contractual relationships between business users and customers, or</p> <p>(2) a digital platform service that is an online search engine.</p> | <ul style="list-style-type: none"> • For a natural person, within 60 days from the last day of a calendar year • For a juristic person, within 60 days from the last day of an accounting year <ul style="list-style-type: none"> • For a natural person, within 60 days from the last day of a calendar year • For a juristic person, within 60 days from the last day of an accounting year |
| <p>3) Upon business cessation</p> | <p>Notification of cessation of the digital platform's operation</p> | <p>Not less than 60 days prior to the cessation of business</p> |

Penalty for non-compliance

- Failure to supply notification to ETDA prior to the commencement of the business, or violation an EDTA officer's order, will result in imprisonment of up to one year, or a fine of not more than THB100,000, or both.
- If the operator is a juristic person, and such violation arises from an order, action, or omission by a director, manager, or other responsible person, such a person is also responsible for the violation and subject to a penalty.

Note: The Royal Decree also sets out rules which must be implemented by the business operator of digital platforms, including rules relating to: notification of terms and conditions to users prior to, or at the time of, service; requirements of transparency and fairness; remedy measures; and cessation of business. Operators are advised to make sure that their business is always in line with the laws and regulations to prevent compliance risks and ensure credibility to users or customers.

How can KPMG Law assist you?

Our team at KPMG Law can provide legal advice and assist with the notifications and other compliance matter required under the Royal Decree. For more information, please feel free to contact us.

Key Contacts

[Kannika Boontaim](#)

Head of Legal
KPMG in Thailand

[Boonyaporn Donnapee](#)

Partner

[Pimyada Sawhetkanit](#)

Director

[Sirion Leaw](#)

Director

[Thamavadee Kingkarnjanathorn](#)

Director

[Threenuch Bunruangthaworn](#)

Director

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