

## **Navigating Thailand's Digital Platform Service Regulations**

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### **Newsletter Purpose:**

This newsletter aims to simplify Thailand's digital platform service regulations, focusing on the Royal Decree requirements. We provide overview of guidance to businesses, both local and international, on their obligations for prior notification to the Electronic Transactions Development Agency (the “ETDA”). By outlining the definition and the types of digital platform services, submission deadlines, and other essential obligations, we aim to ensure businesses understand and comply with the regulations effectively.

### **Implications of the Royal Decree:**

Due to the effectiveness of the Royal Decree on the Operation of Digital Platform Service that are Subject to Prior Notification B.E. 2565 (the “**Royal Decree**”) since 21 August 2023 and its sub-regulations issued thereof, business operators in the realm of digital platform service are required to submit prior notification and annual report to the ETDA.

Moreover, the scope of this Royal Decree extends beyond domestic boundaries, affecting not only business operators within Thailand but also those operating digital platform services from abroad (extraterritorial effect), including digital platform services consisting of the following characteristics:

- Displaying content in the Thai language whether in whole or in part.
- Registering using a domain name with the extension “.th” or “.ไทย”, any other name that signifies Thailand, or a domain name in the Thai language.
- Requiring or allowing the payment option to be made in THB currency.
- Having conditions requiring Thai law to be the governing law or Thai court to resolve the case relevant to digital platform service.
- Paying service fee to provider of search engine to facilitate access by users in Thailand to digital platform service of the operator.
- Having office, entity, or personnel hired Thailand to support or assist users within Thailand.
- Having any other characteristic as subsequently prescribed by the official.

Consequently, overseas business operators together with digital platform services consisting of characteristics mentioned above must adhere to the obligation of prior notification. However, it is important to note that while they are required to appoint a local coordinator to facilitate the prior notification process, establishing their

business (a physical presence) in Thailand is not mandatory. In other words, it is not necessary for a business operator outside of Thailand to register a legal entity in Thailand, however it is required just to appoint an individual or a juristic person who can act as a contact person for the authorities and notify the information relevant to the provision of Digital Platform Service to the authorities.

**Definition of Digital Platform Service:**

According to the Royal Decree, “Digital Platform Service” refers the provision of electronic intermediary services that manage data to facilitate the connection, through computer networks, between business users, consumers, or users with a view to concluding an electronic transaction, regardless of whether remuneration has been charged. However, this does not include a digital platform service that is intended for offering goods or services by a digital platform service operator itself or its affiliated company which is an agent of such operator, irrespective of whether the goods or services are offered to third persons or to affiliated companies. This exemption simply refers to e-retail businesses that the e-retailer sells the products on its online shop. These are operations where operators directly sell goods or service to users or customers via the digital platform, with purchases made directly from the operators. Examples of such businesses include Uniqlo Online Shop, Central Online Shop, Tops Online Shop, H&M Online Shop, and others. However, as mentioned below, please note that if these retailers' online shops contain web boards<sup>1</sup> or banners (in general, for advertisements of other companies), such online shop is considered a digital platform as defined by the Royal Decree and its sub-regulations.

It is noteworthy that besides the definition prescribed underneath the Royal Decree, the subsequent sub-regulations issued with specific examples of Digital Platform Service to cover certain services, as indicated on the prior notification form under the sub-regulation. For example, the Digital Platform Service relevant to online marketplace, sharing economy, online communication, social media, advertising service, audio-visual and music sharing, searching tools, and more.

**Types of Digital Platform Service:**

The ETDA has categorized Digital Platform Services into two main groups, each requiring different prior notification forms as follows:

No.	Types of Digital Platform Service	Short-Form Notification	Full-Form Notification
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<sup>1</sup> Typically, web board is an online space for users to share information and engage in discussions related to specific topics or themes.

1	Small Digital Platform / Low Potential Impact Digital Platform Service	✓	
2	General Digital Platform Service* <sup>2</sup>		✓

The criteria for the Small Digital Platform Service and the General Digital Platform Service are as follows:

No.	Types of Digital Platform Service	Criteria
1	Small Digital Platform Service	<p><u>Small Digital Platform Service:</u></p> <ul style="list-style-type: none"> <li>Entity operators (juristic person) shall have annual revenue before cost deduction <u>not exceeding</u> THB 50 million; <u>and</u></li> <li>Average monthly active users (AMAU) <u>do not exceed</u> 5,000 users.</li> </ul> <p><u>Low Potential Impact Digital Platform Service:</u></p> <ul style="list-style-type: none"> <li>E-service that provides web board for assistance or consists of hyperlink/banner therein, such as Apple Support Communities or Reddit web board.</li> </ul>
2	General Digital Platform Service	<ul style="list-style-type: none"> <li>Entity operators (juristic person) shall have annual revenue before cost deduction <u>exceeding</u> THB 50 million; <u>or</u></li> <li>AMAU <u>exceeds</u> 5,000 users.</li> </ul>

### Notification Forms:

There are two types of notification forms: the short-form and full-form notifications.

Short-Form Notification includes basic information about the business operator, digital platform service, and local coordinator if applicable, covering the details such as the operator's name, address, registration number, service name, types offered, available digital platform channels such as URL, etc.

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<sup>2</sup> According to General Digital Platform Service, it can be classified into five types of Digital Platform Service as the following: (1) General Digital Platform Service, (2) Commercial Digital Platform Service/Search Engine Digital Platform Service, (3) Large Digital Platform Service, (4) Specific Digital Platform Service posing potential risks to specific matters, and (5) Specific Digital Platform Service impacting significant matters. The classification of each type depends on the specific criteria they meet.

Full-form notification requires more detailed information in addition to the information required by Short-Form Notification, including user information<sup>3</sup> such as user types and the number of users, and the top 5 most frequently reported complaints related to the digital platform service.

In addition, digital platform service providers are obliged to submit annual reports to the authorities. For the general digital platform service providers, it is obliged to submit the same information described in the aforementioned prior notification, while the small digital platform service providers are required to submit the value of transaction concluded on the digital platform service, revenue from providing digital platform service within Thailand, and total number of users and number of each type of users in addition to the information in the prior notification. The annual report shall be submitted in the form prescribed by the authorities within 60 days of the end of the fiscal year (if the service provider is a juristic person),

### **Timeframe:**

The deadline for submitting prior notifications varies depending on the type of Digital Platform Service as follows:

<For the operator who provided the services before 21 August 2023>

- The deadline for small digital platform services is 20 August 2024.
- The deadline for general digital platform services is 18 November 2023.

<For the operator who provided the services after 21 August 2023>

- The deadline for small and general digital platform services is before providing the services.

Failure to comply with these deadlines may lead to criminal penalties. Those individuals or entities, along with their managers or directors involved in the business operation, including both authorized and general directors, found in breach may incur fines of up to THB 100,000, imprisonment for a maximum of one year, or both.

### **Submission Channels:**

Prior notifications can be submitted via the ETDA online portal or at the ETDA office.

### **Other Obligations under the Royal Decree and its Sub-Regulations:**

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<sup>3</sup> User information is required if the Digital Platform Service has been provided or operated before the effectiveness of the Royal Decree.

Listed below are other important obligations mandated by the Royal Decree and its sub-regulation that business operators must consider:

Obligations	Type and Characteristic of the Digital Platform Service					
	Small Digital Platform Service	General Digital Platform Service				
		(1) <sup>4</sup>	(2) <sup>5</sup>	(3) <sup>6</sup>	(4) <sup>7</sup>	(5) <sup>8</sup>
Declare terms and conditions of the service provider to the user for the acknowledgement.	×	×	✓	×	×	×
Notifying the procedure and policy of monitoring and indemnifying damage together with notifying the result and conclusion of the insurance agreement in the terms and conditions.	×	×	✓	✓	✓	✓
Notify the cease of business operation within the due time.	✓	✓	✓	✓	✓	✓
Notify plan and policy post services for each user to the ETDA for the acknowledgement.	✓	✓	✓	✓	✓	✓
Declare the cease of business operation to each user for the acknowledgement.	✓	✓	✓	✓	✓	✓

### Conclusion:

In adherence to the Royal Decree and its sub-regulations, businesses operating relevant to Digital Platform Services should undertake the following steps:

1. Assess whether their current business operations fall under the Digital Platform Service framework.

<sup>4</sup> General Digital Platform Service

<sup>5</sup> Commercial Digital Platform Service/Search Engine Digital Platform Service

<sup>6</sup> Large Digital Platform Service

<sup>7</sup> Specific Digital Platform Service posing potential risks to specific matters

<sup>8</sup> Specific Digital Platform Service impacting significant matters

2. If so, discern the specific category of Digital Platform Service applicable to their business to ascertain the corresponding obligations required by the Royal Decree and its sub-regulations. Note that the obligation to submit prior notification applies across all types of Digital Platform Services.

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With a wealth of experience acquired from renowned boutique law firms in Thailand, he brings an exceptional level of expertise that encompasses both domestic legislation and international commercial practices. His profound understanding extends across diverse legal areas, including intellectual property law, contract law, corporate and commercial law, and beyond. On top of that, Arun has gained practical experience in providing valuable support for M&A transactions and contributing to the structuring of cross-border deals.

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