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## The Movie and Game Bill: Summary of Potential Impact on the Game Industry in Thailand

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### Background

The Bill on Movies and Games (the “**Bill**”) has been published by the Department of Cultural Promotion under the Ministry of Culture of Thailand (“**DCP**”), for public hearing from 20 April – 24 May 2023. If the Bill is enacted, the resulting act will replace the Film and Video Act B.E. 2551 (2008) (the “**Film and Video Act**”), which forms the current law that regulates the import and distribution of movies and games in Thailand. In this article, we discuss, as below, the key takeaways from the latest available version of the Bill, focusing on provisions which concern the gaming industry.

### 1. Establishment of National Committee for the Promotion of the Movie and Game Industries, and Rating Committee

Under the Bill, the National Committee for the Promotion of the Movie and Game Industries (the “**Movie and Game Committee**”) will be established and will be entrusted with the task of presenting to the Cabinet policies and measures to promote the industries. The Movie and Game Committee will be composed of officers from the relevant authorities, such as the Minister of Culture, Permanent Secretaries from various ministries, and the chief of the Royal Thai Police, as well as qualified specialists in the fields of journalism and multimedia, and the like. The Movie and Game Committee will also be responsible for making recommendations to the Minister of Culture to announce the sub-regulations under the Bill.

In addition to the Movie and Game Committee, one or more rating committees (the “**Rating Committee**”) will be established to designate ratings for games which will be distributed in Thailand, as well as to grant permission to export games as required under Section 17 of the Bill. The Rating Committee for games will be comprised of specialists with expertise in gaming, culture or journalism, and representatives from the gaming industry and parent and child groups.

### 2. Broader definition of “games”

Under the current Film and Video Act, “games” are included within the definition of “video”, which is defined as “material which contains the recording of visual images or visual images and sounds which can be continuously shown as moving pictures in the form of gameplay...”. Under the definition in the current law, “games” which are subject to inspection under the Film and Video Act are limited to those which are recorded in the form of physical copies, such as, Blu-ray disc or cartridge.

Under the Bill, “games” are defined separately from other entertainment media as “continuously moving images, whether with or without sound, which are presented to a person to participate in playing via technology which is used to analyze and process information.”. Given this definition, the “games” which are subject to the regulation under the Bill are no longer confined to those in physical form but will include games in any medium. As a result, the Bill will broaden its regulation to contemporary channels of game distribution, such as digital copies, steaming services or mobile games.

### 3. Introduction of “rating system” for games

Under Section 47 of the Film and Video Act, the content of videos (including games) which will be distributed in Thailand must pass inspection by the Film and Video Inspection Committee established under the same Act. In this regard, the Film and Video Inspection Committee shall have the authority to order censoring or editing of, or shall impose a ban on, videos or games which are against public order or good morals or may affect the security and dignity of the country.<sup>1</sup> However, unlike movies, the Film and Video Act does not have a rating system to classify games for suitable ages.

The Bill, however, will introduce a rating system which applies to both movies and games. Under Section 15 of the Bill, games which will be screened<sup>2</sup> or distributed<sup>3</sup> in Thailand must receive ratings based on their content and appropriateness to the age of the players. The rating will be considered by either (i) the Rating Committee or (ii) a private evaluator. Details of ratings, including consideration criteria and levels, will be stipulated later by notification of the Minister of Culture, under the recommendation of the Movie and Game Committee.<sup>4</sup> Games which have passed the inspection and receive a rating will be granted serial numbers and be required to display rating symbols.<sup>5</sup>

In addition to the domestic rating system, under Section 26 of the Bill, the Minister of Culture may announce a notification recognizing the rating standard adopted by foreign rating organizations. Under Section 26, games which have been rated by foreign rating organizations, such as ESRB<sup>6</sup> (USA and Canada) and CERO<sup>7</sup> (Japan) could be deemed to have passed the rating inspection under Section 15 without having to go through inspection in Thailand again, provided that those foreign standards have been recognized by the notification issued under the Bill.

It is noteworthy that the Bill contains no criteria on how to determine whether a game is “being screened or distributed in Thailand” and thus is subject to the rating system under the Bill. Given the lack of these criteria, we can assume that the Bill intends to regulate any game which can be purchased within Thailand, including those distributed through digital stores and online games, the servers of either of which are located abroad without reservation (for example, a game may be deemed to be screened or distributed in Thailand only when it is in Thai language or is intentionally marketed for Thai players). As a result, foreign game distributors whose businesses are entirely offshore could also be subject to the Bill in the same manner as local distributors. This extraterritorial application of the Bill is suggested in the wording of Section 27, which stipulates that the relevant officials under the Bill shall have the authority to demand that providers of games which are screened or distributed through a “telecommunication system” display the rating symbols and serial numbers if such providers have failed to do so.

### 4. Introduction of “private evaluator” system

In connection with the rating system for games as mentioned above, producers of games may choose to submit their games for rating under Section 15 of the Bill through a “private evaluator” channel. In this regard, a “private evaluator” under the Bill is defined as “a person or juristic person who has been registered as the private evaluator with the registrar” i.e., the central DCP’s office or local branches. The qualifications of the private evaluator as well as criteria for the registration thereof shall be announced by the DCP.

From the wording of the Bill, a private evaluator will become an additional channel, for game rating, to the Rating Committee, and may facilitate game producers by reducing congestion in the process of inspection by the authority. Nevertheless, Section 15 paragraph 2 of the Bill imposes the additional requirement for games which will be rated through the private evaluator channel that such games must not contain content which is harmful, against public order or good morals or affect the national security and dignity. Any private evaluator who suspects that the game under its review may contain such prohibited content must submit the game for inspection and rating directly to the Rating Committee.

1 Section 29 of the Film and Video Act

2 Section 4 of the Bill. “Screening” means “showing the content of movies or games by any tools or any method.”

3 Section 4 of the Bill. “Distribute” means “selling, disbursing, giving out, exchanging, transferring or renting out.”

4 Section 19 of the Bill

5 Section 21 and Section 22 of the Bill

6 Entertainment Software Rating Board

7 Computer Entertainment Rating Organization

## 5. Permission to export games outside Thailand

Under Section 17 the Bill, the exporting of games which are produced in Thailand shall require permission from the Rating Committee in accordance with the criteria to be announced by the relevant Minister's notification, except for games which have already received the rating under Section 15. Failure to obtain the permission to export games will be punishable by a fine ranging from 10,000 to 5,000,000 Thai Baht.<sup>8</sup> It is noteworthy that the requirement to obtain permission to export games already exists under Section 49 of the Film and Video Act, pursuant to which the exporting of "videos" produced in Thailand shall require the permission from the Film and Video Inspection Committee. However, as discussed above, the definition of "videos" under the Film and Video Act does not extend to games in digital copies, and as a result, the current law leaves rooms for game producers in Thailand to export games via digital platforms without legal restriction.

### Conclusion

Following the publication of the Bill for the public hearing, the Bill has received feedback from members in both the gaming and movie industries. Much of the feedback expresses skepticism on the requirement to obtain permission to export, and on the stance of the authority and the criteria for the inspection of game content. The feedback also extends to the most fundamental question for regulations on gaming: Should there be a specific law that emphasizes promotion of game creation and ratings, rather than censorship of content? Given this feedback, it can be expected that the Bill will require further review to reflect the voice of the industry and strike a balance between suitability for players of all ages and freedom of expression.

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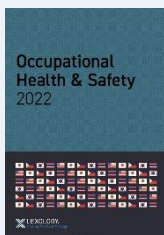
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<sup>8</sup> Section 75 of the Bill

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