

March, 2025 No.98

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Thailand

Key Insights on Draft New Legislation Regulating Digital Platforms

タイ政府は、2001年に電子取引法、2022年に一定のデジタルプラットフォーム事業について事前届出を要求する勅令をそれぞれ施行していますが、今年、当該分野におけるさらなる規制として「デジタルプラットフォームエコノミー法案」を公表しました。本法案は、デジタルプラットフォームサービスの監督、公共の利益及び利用者の保護、並びに、公平な競争促進を目的としています。プラットフォーム事業者に対して、利用者への権利通知、広告コンテンツの明示、違法行為報告手段の提供等の義務を課すとともに、大規模プラットフォーム事業者（VLOPs）にはより重い義務を課す内容となっています。

1. Background

It is an undeniable fact that digital platforms have worked their way into people's lives in an attempt to facilitate day-to-day activities in all aspects, for example, social interaction, financial transactions, and online marketplaces. Along with the rise of such digital platforms, regulators have faced challenges to protect consumers and ensure users' safety.

In Thailand, the government has enacted the Electronic Transactions Act since 2001 and the Royal Decree re: The Operation of Digital Platform Service Businesses that are subject to Prior Notification in 2022 in order to regulate the operation of digital platform service providers. To further regulate this sector, this year, in 2025, the Thai government has introduced a new draft legislation for digital platforms i.e. the Draft Digital Platform Economy Act (the "**Draft Act**"). The purposes of this Draft Act are to monitor the provision of digital platform service, to protect public interest and service users and to encourage fair competition in platform system. The Draft Act entails ex-ante approach by prescribing certain duties for the platform service providers. Also, the regulatory body, i.e., the Digital Platform Economy Committee (the "**Committee**"), is expected to be established to, among others, set up a policy and framework for digital platform service. This article sets out a summary of the key provisions of the Draft Act.

2. Key Obligations for Service Providers

The service providers of digital platforms which will be regulated under the Draft Act are classified as follows:

A. The providers of digital intermediary service

Digital intermediary service means the provision of services over a computer network, the internet or telecommunication networks, acting as intermediaries between senders and receivers of information which are mere conduit service (i.e. data transmission services), caching (i.e. temporary data system services), hosting (i.e. data storage services) and other services which may be announced under the subordinate regulation. The digital intermediary service providers have several obligations under the Draft Act, for

example, notifying the users of rights and duties under relevant laws related to sale and purchase, service or any transaction through digital platform service, publicizing terms and conditions of service to users. Nevertheless, the service providers are not obligated to examine the data which they receive, transmit or store in order to detect any illegal activities.

Most importantly, the providers of digital intermediary service shall not be held accountable for any illegal actions arising from the data transmitted or stored through their services, provided that, for instance, such digital intermediary service do not initiate transmission of any illegal data, comply with general standard of caching service, or do not know or could not know, even with caution, that such stored data is illegal.

B. The providers of digital platform service

Under the Draft Act, digital platform service is the provision of [hosting (data storage services)] that facilitates the matching of different types of users to enable electronic transactions or interactions, whether service fees are charged or not. Digital platform services in Thailand are, for example, e-commerce marketplace, flight and hotel booking applications, ride-hailing applications, search engines, food delivery platforms.

The obligations for the platform service operators are, among others, to inform users of rights and duties under relevant laws regarding the sale and purchase of goods or services, to disclose to users which content is advertising and distinguish advertising content from non-advertising content, to provide channel for complaints or to report information concerning illegal activities.

Additionally, the Draft Act further prescribes characteristics of Very Large Online Platform Services (“**VLOPs**”) and these VLOPs are subject to extra obligations. To fall under VLOPs, the operator must have either one of the following characteristics:

- having annual revenue from digital platform service in Thailand exceeding THB 1 billion;
- having more than 6 million users in Thailand per month; or
- posing high risks to economy and public security.

For VLOPs located outside Thailand, if they provide service to users in Thailand and meet the above characteristics, they shall also be subject to notification of duties under the Draft Act.

The main duties of VLOPs are, for instance,

- to notify its information to Electronic Transactions Development Agency (“**ETDA**”), e.g. name of individual or company that owns such online platform, company registration number, contact information which at least includes a contact of high-level executive for legal compliance, name of platform service, value of transactions on such platform, revenue gained from platform service, etc.;
- to provide mechanism for tracking users who sell goods or provide commercial service through the platform;
- to suspend the provision of service to users who commit serious offence or an offence which may affect politics, economy or social security immediately;
- to prepare an annual transparency report which at least includes information regarding, among others, statistics of violation activities, examination and management method for illegal data which have been received, transmitted, stored or processed through the platform, and publicize such to public via its platform at all times.

C. The gatekeepers

The gatekeeper refers to the providers of core platform services, e.g. online search engines, online social

networking services, online intermediation services, video-sharing services, web browsers, cloud computing services, for digital platform who have the authority to control access to services provided by others e.g. to grant or deny users entry to other platforms. Operators who will be considered as gatekeepers must have the characteristics and fall under the criteria as in the table below.

Characteristics	Criteria
1. posing significant economic and social impact	Annual income: having annual income over THB 7 billion from core platform service in Thailand
2. being an important gateway for business users to reach end users	Users: having over 15 million end users per months and at least 10,000 business users per year in Thailand
3. having power to limit other operators from competing therewith and being able to maintain its durable position	Market power: having the number of end users and business users in Thailand over the past 3 years equal to the number of users specified above

Among others, the gatekeepers are obliged to:

- not restrict business users from selling products or providing services through other platforms;
- allow business users to freely communicate, offer products or provide services to end users without additional charge;
- not act, directly or indirectly, to obstruct or restrict the right of the users in notifying, reporting or filing complaints to government agencies or court in connection with legal violation;
- disclose information regarding advertising fee, commissions, discounts and pricing formulas to advertiser or publisher without charge;
- allow end users to uninstall or change default setting for application;
- not prioritize its own products or services unfairly in search results or ranking.

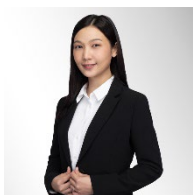
3. Governing Authorities

The main governing authority which will oversee the application of this Draft Act in terms of protection of users is the Committee which is established under the Draft Act and it will operate under ETDA. Additionally, the Draft Act contains several provisions concerning trade competition and grants the Trade Competition Commission of Thailand (“TCCT”) certain authority thereunder e.g. consideration of business size of the gatekeeper shall be based on connecting policy and management control under the criteria of TCCT, ETDA shall provide information of VLOPs providing core platform service to TCCT, TCCT must cooperate with ETDA to achieve the purposes of this Draft Act. Furthermore, the Committee will consist of 2 directors who are designated by the TCCT. In terms of fair competition, TCCT will mainly oversee this matter, particularly for operators designated as gatekeepers.

4. Conclusion

The Draft Act has just undergone public hearing from 15 January 2025 to 15 February 2025. It is expected that the enactment of the Draft Act will build trust in users to use digital platforms and will increase more online transactions, even though the compliance burden for operators and digital service providers would increase. Furthermore, it aims to reduce illegal activities and contents on digital platforms. The operators of digital platforms in Thailand should start preparing to meet the compliance obligations under the Draft Act.

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India

Summary of Key Updates – Jan to March 2025

インドは近年投資対象国として日本企業からも熱い視線を浴びているところ、インド政府も投資環境を向上させるべく様々な施策を積極的に進めている。本稿では 2025 年第 1 四半期の法務面の重要なアップデートを概説する。

In the first calendar quarter of 2025, certain key changes in the regulatory landscape have been introduced by the Government of India by way of notifications and as part of the Union Budget 2025-2026 (“**Budget 2025**”). This article sets out a summary of the key updates announced in this quarter which would be relevant from the perspective of a foreign investor.

Draft DPDPA Rules

On 3 January 2025, the Ministry of Electronics and Information Technology released the draft Digital Personal Data Protection Rules, 2025 (“**Draft Rules**”) under the Digital Personal Data Protection Act, 2023 (“**DPDPA**”) for public consultation, accompanied by an explanatory note that provides further context to the Draft Rules. The DPDPA was enacted in August 2023, and is yet to come into force. While the DPDPA provided for the rights of the data subject and stipulated key compliances that would need to be complied by a data fiduciary (data controller), it left the details for such compliances to be prescribed by way of rules. The Draft Rules accordingly prescribe detailed rules regarding such matters including notice and consent requirements, cybersecurity requirements, manner of seeking verifiable consent for children, grievance redressal mechanisms, personal data retention periods, reporting personal data breaches, etc. The public consultation process was completed on 18 February 2025.

As on the date of writing of this article, the status of the implementation of the Draft Rules is not clear. As a first step however, it is expected that the rules concerning the formation and composition of the Data Protection Board (which will be the regulating authority) will come into force, followed by compliance-related rules to be complied by data fiduciaries.

Clarification Regarding Foreign Owned and Controlled Companies

On 20 January 2025, the Reserve Bank of India issued an updated Master Direction on Foreign Investment in India (“**Master Direction**”). The updated Master Direction provides much needed clarity on certain long-standing issues relating to the structuring of downstream investments by foreign owned or controlled companies (“**FOCC**”). FOCC i.e. an Indian company that is majority owned and controlled by foreign entities is a unique concept under Indian foreign exchange laws. From a company law perspective, an FOCC is treated as a domestic company but from a foreign exchange law perspective, an FOCC is treated at par with a foreign investor. Accordingly, any investment by an FOCC is subject to same entry route restrictions, sectoral caps, pricing guidelines and approval requirements as are applicable to a foreign investor investing directly into India.

Notwithstanding the aforesaid, it was interpreted by AD-Banks that certain structuring options that were available to foreign investors were not available to an FOCC. The Master Direction now clarifies that FOCC while undertaking downstream investments (i.e. indirect foreign investment) shall be entitled to the same flexibility in structuring transactions, as is available to a foreign investor in case of direct foreign investment, which include:

- **Deferred Consideration:** FOCCs while undertaking downstream investments can defer 25% of the purchase consideration for a period of 18 months by way of holdback, escrow, or indemnity mechanism which is similar to the flexibility available to foreign investors investing directly in Indian companies.
- **Share Swap:** An FOCC while transacting shares of another Indian company may discharge consideration by way of swap of shares of an existing Indian or foreign company, or by way of issuance of shares by the FOCC.

Further Liberalization of the Insurance Sector

The finance minister in the Budget 2025 proposed a major reform in the insurance sector by increasing the maximum foreign direct investment (FDI) limit from 74% to 100%, under the automatic route i.e. without any government approval. The enhanced limit is subject to the condition that the insurers invest the entire premium

collected in India itself. Given the population of India which is currently severely underinsured, this liberalization would serve as a massive opportunity for foreign insurers looking to set up wholly owned business operations in India. An additional relaxation was also offered to foreign re-insurers by lowering the net-owned funds requirements from INR 50 billion (approximately USD 570 million) to INR 10 billion (approximately USD 114 million).

Regulatory Reforms

Further, the Budget 2025 has proposed constituting a high-level committee for regulatory reforms which will conduct a comprehensive review of all non-financial sector regulations in India seeking to ensure ease of doing business in India. As per the press release following the Budget 2025, it is stated that the committee is expected to make recommendations within a year. The objective is to strengthen trust-based economic governance and take transformational measures, especially in matters of inspections and compliances.

Extension of Timeline for Dematerialization:

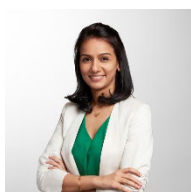
The Ministry of Corporate Affairs (“MCA”) had on 27 October 2023 amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“PAS Rules”) mandating (i) every private company (which is not a small company) as per its audited financial statements on or after 31 March 2023, to (A) facilitate dematerialisation of all its securities by 30 September 2024 (“Due Date”) and (B) with effect from the Due Date, issue the securities only in dematerialised form; and (ii) a security holder of a private company (A) intending to transfer its securities in the company on or after the Due Date, to get such securities dematerialised before the transfer; (B) intending to subscribe to any securities of such private company whether by way of private placement or bonus shares or rights offer on or after the Due Date, to ensure that all securities held by the security holder are in dematerialised form before such subscription.

However, given that dematerialisation is a time-consuming process requiring opening of demat accounts, obtaining of ISIN, entering into agreements with depository participants etc., many private companies and security holders were unable to complete the process by the Due Date. Several representations were made by multiple stakeholders to the MCA to postpone the deadline. While the deadline of 30 September 2024 passed, on 12 February 2025, the MCA issued a notification further amending the PAS Rules and postponing the deadline for the dematerialisation of securities of private companies to **30 June 2025**. This means that, for the time being, securities of private companies can be issued and transferred without being dematerialised. Notwithstanding the extension of the Due Date, it is recommended that private companies and existing shareholders of Indian private companies complete the process at the earliest.

Conclusion

The Government’s constant endeavour to ease doing business in India is reflected through the above amendments/updates. With several other regulatory reforms expected this year, foreign investors investing in India should ensure they are abreast of the latest developments and the potential impact it can have on their growth strategies and structuring of investment opportunities.

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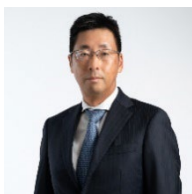


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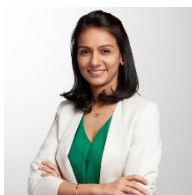
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