

THAI DIGITAL PLATFORM SERVICE BUSINESSES LAW – WHAT DO PLATFORM OPERATORS HAVE TO COMPLY WITH? PART I

13 MARCH 2024 • ARTICLE



"Platform operators may be subject to different compliance requirements depending on the size and characteristics of their platform, with big and/or unique platforms subject to additional obligations."

Having notified Thailand's Electronic Transactions Development Agency (the "ETDA") of their business operations by November 2023 as required by the Royal Decree on the Operation of Digital Platform Service Businesses that are subject to Prior Notification B.E. 2565 (2022) (the "Royal Decree"), platform operators must now ensure ongoing and full compliance with its requirements.

In this article, we focus on the ongoing compliance requirements relating to the T&Cs for platforms which are the main set of rules that users and operators must follow.

Rules for digital platform business operation and administration are prescribed in Part II of the Royal Decree. Platform operators may be subject to different compliance requirements depending on the size and characteristics of their platform, with big and/or unique platforms subject to additional obligations.

Regarding general obligations, all platform operators must notify the ETDA within 30 days of any changes to the information previously submitted to the ETDA as part of their notification of platform business. This includes (i) the operator's details; (ii) the platform's name; (iii) the platform's type; (iv) the channel via which the platform is provided; and (v) details of the platform's coordinator in Thailand when the operator is based abroad.

The Royal Decree provides that platform operators who have the following criteria are not subject to the compliance requirements under Part II of the Royal Decree:

- corporate operators with a gross income from services provided to users in Thailand of THB50m pa or less and 5,000 (or less) active monthly users in Thailand;
- individual operators with a gross income from services provided to users in Thailand of THB1.8m or less pa and 5,000 (or less) active monthly users in Thailand;

- platform operators with characteristics as prescribed under the Notification of the Electronic Transaction Commission re: characteristics of digital platform services which are subject to a brief notification requirement. This includes operators with websites or applications that purport to provide goods or services from a single service provider, or of its affiliate companies acting as their representative, provided that such platforms are e-service platforms containing web-boards for users' help desk or hyperlinks/banners.

Pursuant to the Royal Decree, the following platforms are required to notify their T&Cs to users before or upon use:

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1. platforms which meet all of the following characteristics:

- platforms that charge service fees;
- platforms that act as an intermediary in offering goods or services to consumers, regardless of whether the transactions relating to the goods or services take place in whole or in part on the platforms; and
- platform operators who have contractual relationships with business users that offer goods or services on the platform and to consumers.

"When there is a change to T&Cs, the operator must notify both the ETDA and users in accordance with the rules and procedures and within the period prescribed by the Notification of the Electronic Transaction Commission."

2. online search engines.

In all instances, platform T&Cs must contain the following as a minimum:

- the terms and conditions of services, service suspension or termination, and fee charges;
 - the main parameters for algorithms and/or criteria used by the operator to rank or recommend to users listed goods and services;
 - the main parameters for algorithms and/or criteria used by the operator to advertise goods or services to users;
 - the main parameters for algorithms and/or criteria used by the operator to collect, moderate and publish user reviews;
 - access to and use of data received from the provision of the digital platform service by the operator or user;
- support channels, internal complaint-handling systems and dispute resolution mechanisms, as well as a timeframe for such actions;
 - the rating of goods, services or contents appropriate to each group of users; and
 - actions to be taken against illegal goods, services or contents.

When there is a change to T&Cs, the operator must notify both the ETDA and users in accordance with the rules and procedures and within the period prescribed by the Notification of the Electronic Transaction Commission.

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Pursuant to the Notification of the Electronic Transaction Commission re: rules, methods and period for notifying changes of the terms and conditions of the digital platform services dated 7 August 2023 (the “T&C Notification”), such changes must be notified to users at least 15 days before the effective date on which they are to be made. A longer advance notice period may apply as appropriate when taking into account the nature, scope and effects of the proposed changes on case by case basis. In addition to this timing requirement, the T&C Notification also imposes requirements on the notification content and provides exemptions to the 15-day prior notice.

"Unless exempted or longer notice period is required, changes must be notified to users at least 15 days before the effective date on which they are to be made."

In the next article, we will explore the characteristics of big and/or unique platforms and how their compliance requirements differ from those applying generally.

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