



TWO PARTS: Digital Economy/ICT; GENERAL

Digital Economy/ICT

Personal Data Protection Act (PDPA) was enacted May 2019, to come into force May 2020. Operational parts were deferred to 1 June 2021. Development of detailed rules / regulations is now under way. There is not much time to be ready. Privacy laws when first introduced typically need long lead times of industry education, agreement on procedures etc. The introduction of this law requires a change of mindset about compliance, and change of procedures.

- (i) Group 1 topics - 15 -18 Feb – eight identical sessions of public ‘hearing’ overview each with the same eight topics – more discussing concepts and some specific points.
- 1) Consent
 - 2) Notice
 - 3) Sensitive data
 - 4) Security
 - 5) Cross border
 - 6) Record of processing
 - 7) DPO nomination
 - 8) Complaints procedure

We can submit comments on line by Feb 28.

- (ii) Draft Rules (Regulations) – which may take in Group 1 topics (and topics from other groups) we believe there will be a public hearing on the draft Rules in March.

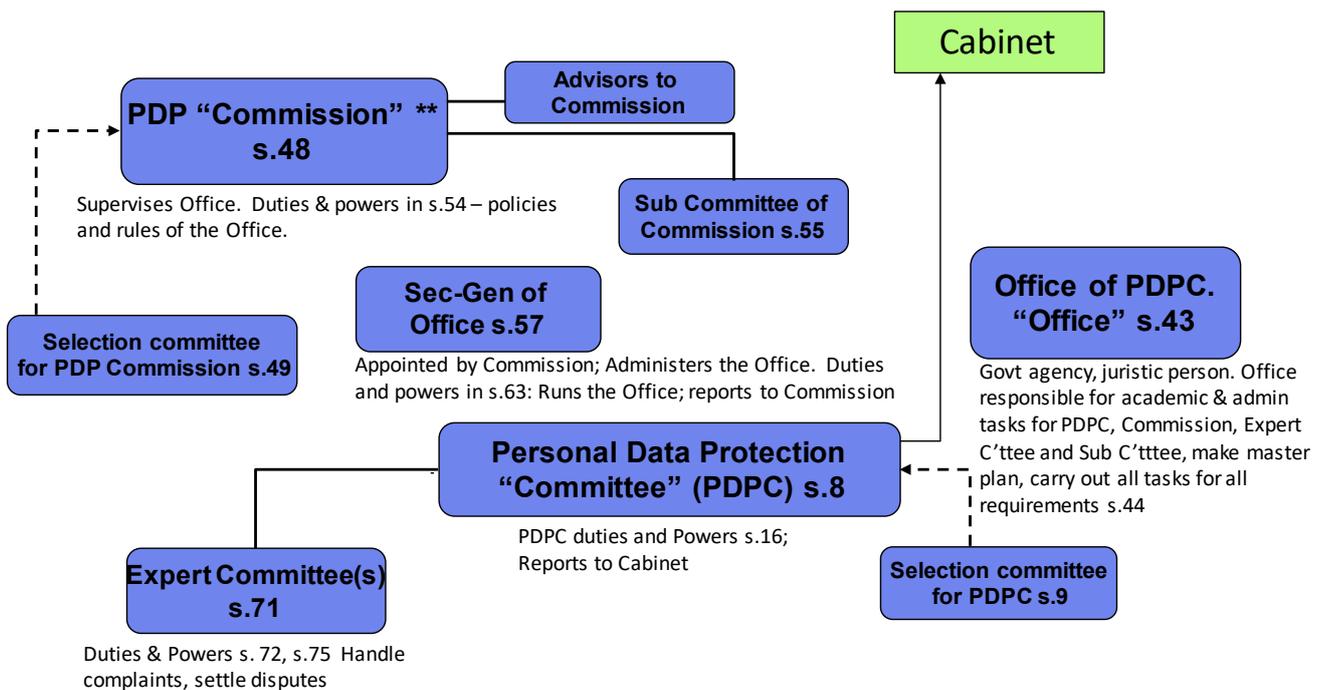
PDPA CONCEPTS

- Data Subject, Data Processor, Data Controller, DPO
- Personal data
- PDPC (Committee) – and see chart
- Consent to collection, use, disclose
- Forms of consent.
- Secondary/derived data
- Sensitive data
- Cross border
- Representative
- Extraterritoriality



Some issues about PDPA

- i) Appointment of Representatives in foreign jurisdictions where data is disclosed to.
- ii) Cross border rules will become more clear.
- iii) PDPC will likely look to industry groups to develop forms of consent – these should be non-mandatory with guidelines on what is required; but if non mandatory it should be helpful to have forms.
- iv) Periods of retention and ability to inspect
- v) Harmony with Cybersecurity Act.
- vi) Industry sector regulators – eg NBTC, Finance, Energy. Will some PDPC powers be outsourced? We suggest not but that sector regulators should advise PDPC and PDPC should listen.
- vii) Extraterritoriality (s. 5 was lifted from Art 3 GDPR).
- viii) The identities of the ‘Committee’ (PDPC) are not yet confirmed. MDES (Dep Perm Sec and others) act as the PDPC in the meantime.



** PDP Commission may be called 'PDPC Supervision Committee'



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If members would like an overview session, following submission of the points about secondary legislation, this can be arranged.

BEING DIGITAL is our mantra for digitalisation across the board. The webinar series, BEING DIGITAL reflects this.

- #3 – Privacy Summit – first half March 2021 – three speakers confirmed so far
- #4 Cybersecurity and Trust Summit – Mar 2021

Series Supporters included 13 chambers. Please be a Supporter.



Cybersecurity – Subsidiary legislation

We met in December with the authors of much of the secondary law, and hope to meet with the new Secretary General of National Cybersecurity Committee (NCSC), the National Cybersecurity Agency, Lt Gen Prachya Chalermwat, PhD. Points of concern include:

- Designation of Critical Information Infrastructure; process, objections etc
- Reviewability of actions of state actors / officials
- Governance MSM model and transparency; how a large Committee will react quickly to deal with cyberthreats

We are also holding a special internal meeting week of 22 Feb on cybersecurity to pool the intelligence and expertise in our group.

Smart Visas – ‘Freelancer’ and other changes

Reported January. No development.

BOI Software development

Reported January. Next stages to resolve, in progress.



eCommerce Tax

See chronology in Minutes of January meeting.

Changes to Revenue Code gazetted 11 Feb, likely in force Sep 2021 with a Guideline from TRD by May. Focus is B2C, simplified system, VAT based, no input tax credit (no tax neutrality). Largely in line with OECD standards.

As reported, we have had a long involvement since 2017 with TRD in the development of this law.

Foreign on-line provides selling more than THB 1.8m pa to Thailand users need to register for VAT and be liable to pay amounts equivalent to VAT, to TRD. If the entity (even if foreign owned) is already in Thailand providing services locally it should already be registered for VAT and would be a tax resident. Such an entity would not need to register.

Some unresolved issues – see minutes of January meeting. We are in touch with MoF (TRD) to seek draft guideline and regulations.

TRD is waiting for OECD developments / consensus about possible additional taxes – ‘Digital Services Taxes’. There is no plan for a direct income tax based impost for eCommerce, only this VAT based tax.

Digital Education / MoE engagement via OVEC

Date not confirmed.

NBTC – new Commissioners

Our long-standing recommendation is to bring external oversight into NBTC. Currently it is a fully executive board (cf. SET listed companies; other similar agencies in the region; other agencies in Thailand).

CAT and TOT merged = National Telecom NT

The new entity is in effect a larger state monopoly (in some respects). Our long standing recommendation is for real reform – focus on fixed backhaul, backbone, local fixed last mile and exit retail mobile for example. Thailand is almost unique in the world in not having evolved the SOE, merger to form NT is not reform. In fact the published plans are more about higher revenue targets in existing lines of business rather than reform. Reform of such entities is difficult, but just about every other economy in the world has done it.

Morchana / Thaichana

Experiential evidence illustrates that the Morchana app was never properly completed. It still has battery draining issues and limits other functions of a smart phone. The government was wise not to insist on penalties for non-use, but it is still mandatory for. A Bluetooth proximity tracing tool won't be effective without wholesome government support (by demonstrated use),



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fixing several bugs and building trust by not using data inappropriately. Most will go along with its use without confidence that it is really useful.

ThailandPlus app. There are reports of development of a new app for foreigners. While a medical management app (of which there are several) can be useful, and (assuming wide spread support and take up), a proximity tracing app (eg one base function of Morchana) can allieviate some of the manual tracing work, we have previously stated that a location app which is designed to show where foreigners are, is not useful.

Broadband

A test site runs assessments and rankings – (i) fixed line; (ii)mobile. Thailand did well regionally with fixed line (ie fibre using FTTx models – eg FibreTo The Home / Fibre To The Building, + gigabit ethernet + (sometimes) WiFi 802.11 ac or better using 5GHz, achieving slightly over 300 Mpbs download. Mobile using 4G nowhere near as good and not ranked anywhere near as good. Fixed line providers include AIS, BBB, True. The fixed line ranking is positive. Interesting no SOE is involved (which should NTs core business).

EUD engagement

We will hold our third engagement with the new EUD head of Trade and Economic section on 18 Feb, objective to support a two-way information and developments flow for mutual advantage.

Telecoms in Myanmar

One of the world's last greenfield sites issues new licences in 2013 – Telenor (Norway) and Ooredoo (Qatar), with other investment including Japanese (eg KDDI). The coup including internet shut down is a travesty on promises given to investors. Telenor Myanmar has tried to maintain a posting of orders given to them, but even that has been curtailed.

GENERAL TOPICS

ECONOMY

2020 GDP out-turn (unconfirmed at this stage) negative 6.1% (better than expected), forecast for 2021 + 3% approx - lower than originally forecast, but it means that recovery to pre COVID levels is unlikely until 2022 or 2023. Exports: Service exports, which include spending by nonresidents such as tourists, were down 60% in 2020 compared to 2019. Exports of goods were down 5.8%. Tourism int'l arrivals down from 40m 2019 to about 7m (mostly in first Q).

Dr Kirida's materials from the 25 Jan webinar are on the JFCCT website.

OECD –note the IPR event on 24 Feb. TDRI held a forum on 11 Feb on whether Thailand should join OECD. Slide pack (in TH) of that event is available.

COVID 19 – compendium of government support updated as needed [on JFCCT website](#) – see first file.



COVID 19 Border Works – safe and structured opening of borders for short stays

JFCCT one pager and short supporting slide pack – [on JFCCT website](#) on COVID 19 page (see second and third file).

Recent (1 February) Interview / engagement Swiss Ambassador and Public Health Minister – Minister reluctant to move from quarantine other than possibly for hermetically sealed business / factory trip.

He stated that PCR test for visa renewal was needed (this is an interpretation of the law, but we understand the law is not being enforced anyway). “...we will surely not send you home with COVID”.

Minister did not warm to PCR test / no quarantine (as Switzerland and Singapore offer several economics access without quarantine; Switzerland welcomes travellers from Thailand, no quarantine).

Minister said that all foreigners legally in Thailand would be vaccinated.

Separately, there is talk of 21 day quarantine for those from ‘high risk’ areas, suggested was from South Africa due to a variant.

Supporting Short Stays

See January minutes and on JFCCT website for supporting short stays, an economic recovery essential. It is surprising that the Ministry of Public Health and CCSA do not acknowledge other state practice in focusing on risk assessments of allowing safe quarantine-free entry from safe economies, subject to safeguards. Those policies seem to be working elsewhere.

COVID 19 Insurance: USD 100,000 does not seem to have a solid basis. Another ASEAN economy reviewed the cost of treatment in private hospitals at SGD 30,000 and that is the mandated level of cover there now. In Thailand, how about USD 25,000? We have taken this up with the industry.

Work Permit and Visa

The various follow ups to the WP and V submission immediately after the 16 December BOI – JFCCT session continues. We have updated a master file on WP &V, using a different format to our 2018 master file. We have also updated the harmonisation / rationalisation materials.

How to change from Non O to Non B.

Following the 16 December list, BOI have advised the outcome for one issue:



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1. Apply for a change of visa type at the Immigration Office by showing the affidavit of the company which you will be working with and at the same time apply for an extension of the non-O if your current visa is expiring very soon.
2. They will renew your non-O (if your current visa is expiring very soon) and make a note on your passport that you will be working with ... company.
3. Once you get this done at the Immigration Office, then go and apply for a work permit.
4. Once you get a work permit, then apply for a non-B. Please make sure that you haven't started working before you get your non-B as you are supposed to have a non-B and a work permit to be legally working in Thailand.

NB: from another source, there was push back from Immigration about using this method. It is possible that BOI is incubating the method for wider acceptance but that it is not yet fully understood.

Other BOI issues: multi-language interaction (who pays) – our proposal suggests a modest levy to kick this off; who needs a WP if you are BOI promoted or exploring? – our proposal seeks clarification and brings in APEC 'business visitor' principles.

PCR test for visa renewal?

Reported at the January meeting. There is a change to the law effective 25 January requiring COVID 19 vaccination (sic) for visa renewal. Oddly other diseases are treated in a Work Permit not visa context and some by testing, not vaccination. The Minister of Public Health in a 1 Feb interview noted that this was a new law, but said that the remedy was to treat anyone who tested positive, if they were legally in Thailand. But in any event it's not possible to expel an infected person.

Strong anecdotal evidence suggests that this law is not being enforced.

Anti Corruption – NACC

Anecdotal and testamentary evidence suggests corruption is on the rise. Thailand has dropped from 99th place in CPI published by Transparency International <https://www.transparency.org/en/countries/thailand#> from August 2019 to 104th in the most recent ranking, worse than Indonesia and Vietnam. We working with International office of NACC with a suggestion for a working level informal information exchange. Not recorded and no fanfare.

Foreign Business Act (FBA)

A Presidents' Working Group met on 28 January and agreed on a limited number of workstreams including these, as a parallel measure to suspending List 3 for three years:



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- Logistics
- Services generally including Item 21
- Education
- Accounting (to be checked)
- Engineering

Also:

- Agriculture
- Architecture

The strong message is that we need to work with those who may not agree with our proposals ('dialogue partners') and those who do and get support from local industry, thus engagement with not only Board of Trade but several other groups.

More details in the meeting notes.

OECD IPR materials and WTO TPR materials were circulated to the presidents' group on 28 Jan. Note the OECD event on 24 Feb. These issues are very relevant.

Next Steps - FBA: it is proposed that the presidents' working group regroups week of 1 March, following developments in the work streams.

Fast track regulatory reform.

See January minutes of time line of developments since September 2020.

Benefits - Guillotine: if all 1,092 or so recommendations were implemented, savings to private sector well over THB 100bn annualised. For public sector (without touching headcount issues) – THB 9bn. EoDB enhanced.

Issues/Challenges: sub committees are re-visiting. Pace of progress will be slow. Target to implement 85% of topics chosen (not the full list) in 2021; 100% in 2022. STO and OPDC supporting all sub committees.

Our focus – engagement with two sub committees – TDRI people on both with home we work. – Guillotine (JFCCT Dr Charlie, Bob) – next meetings 19 and 25 Feb; Digitalisation – meeting held end January. We have drafted a supportive letter to Dr Kobsak, noting a wide group of stakeholders, suggesting areas of focus, and some operational points:

- A plan for addressing all 1,092 if not, what is the focus?
- WP &V
- Tourism licences including wellness licence – to be covered at Feb meetings
- Not an immigration app or 'foreigner app'



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- Easy access to all GU/
- What additional support is needed?

Meetings: #1 19 Jan, #2/16 Feb; #3 11 March Participation is over 20; others welcome. See ‘how to participate’ one pager on JFCCT website – Digital Economy/ICT page.

Select Recent Events (since Presidents’ Council 20 Jan)

- 20 Jan – World Bank TEM launch
- 21 Jan EBO network in SE Asia – RCEP roundtable; ATC as expert
- 25 Jan -3pm Dr Kirida (TDRI) January 25
- 25 Jan – IMD – Thailand competitiveness (first session; 2nd session 26 Jan)
- 26 Jan – Board of Trade update on pandemic management
- 28 Jan – JFCCT Presidents group on FBA List 3
- 4 Feb – EU-ABC interaction with Indonesian ICT Minister, on regional issues
- 11 Feb - Digital Dialogues on Privacy; Jointly hosted by Asian Governance Foundation (AGF), German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG), and Facebook Inc. Roundtable 3: A Discussion on the Notice and Consent in PDPA (Roundtable 2 was 12 Nov 2020)
- 15 Feb – PDPA public hearing pre meeting
- 15 Feb – European Services Forum – informal discussion on services issues - Thailand
- 15-18 Feb PDPA subsidiary legislation – 8 public hearings on concepts, attended afternoon 16 Feb.
- 16 Feb Digital Economy/iCT meeting #2 / 2021.

Up coming Events

- 18 Feb 0930 – 1030. Group discussion with EUD Bangkok office.
- 18 Feb 0930 – 1130 FCCT on economic outlook, vaccines etc
- 19 & 25 Feb – Guillotine Sub Committee meetings.
- 22 or 26 Feb – special Committee meeting on Cybersecurity (date TBC)
- 24 Feb – OECD Investment Policy Review seminar.
- 24 Feb 7pm – FCCT book launch “Praetorians, Profiteers or Professionals?”, Inside the Thai and Myanmar’s militaries”
- 25 Feb JFCCT – RCEP seminar.
- 25 Feb - Artificial Intelligence Standards and Trade in ASEAN; TRPC
- (TBC) MoE (OVEC) / DEEP engagement
- 11 March – Digital Economy/ICT meeting #3
- Early March - DGA third meeting
- BEING DIGITAL series – Privacy Summit – first half March – three of four speakers confirmed.
- BEING DIGITAL series – Cybersecurity and On-line Confidence Summit – Mar



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COVID 19 page <http://www.jfctt.org/major-business-issues/covid-19/>

See Past Events 9, 14, 28 October, 5 Nov, 8 Dec, 16 Dec <http://www.jfctt.org/jfctt-past-events/>

Laws portal for members www.jfctt.org/information-for-digital-economy-committee-members/

please use common DE/ICT password to access.

Updated Glossary - Glossary [here](#)- updated four times.

How to join us: see one pager + longer backgrounder on Committee page of website.

<http://www.jfctt.org/jfctt-committees/digital-economy-ict-committee/>