



TWO PARTS: Digital Economy/ICT; GENERAL

Digital Economy/ICT

MDES Minister

Mr Chaiwut Thanakhamanusorn is confirmed as MDES Minister. Factional or party representation continues to apply to cabinet positions. We have prepared a congratulatory letter.

PDPA

Recap: Personal Data Protection Act (PDPA) was enacted May 2019, to come into force May 2020. Operational parts were deferred to 1 June 2021. Detailed rules / regulations now being developed but the process is laboured and will go over the extended commencement date. We participated in public hearings on the first group of proposals mid February and made a submission 1 March.

We are working with **IAPP** International Association of Privacy Professionals (Thailand chapter)

We wrote 19 March to Dep Perm Sec MDES / Sec-Gen PDPC to propose a road map. The new Minister and Dep Perm Sec are suggesting further deferral beyond 1 June. The next public consultation steps are not clear but should include:

Second Group

Ten rules about regulations, co-operation and co-ordination, rights of data subject, rights and obligations of data controllers (about five are about PDPC – who, and compensation)

Third group

Ten rules, processing of personal data and standards for protection of personal data, operation of PDPC office. How to process information; security,

Release of draft 'Rules' – will that include all three groups?

Public hearing on draft Rules

In addition some larger issues:

- Sectoral regulation – our recommendation is PDPC should be the single authority on data protection but sectoral regulations should be involved to advise and help implement
- Extra Territoriality – currently unworkable – we have as we did in 2018 recommended a 'layered' approach
- Governance – see chart in February PC minutes. Will the PDPC be able to make timely and effective decisions under the planned arrangements?

There are three developments:



- Chula is preparing draft regulations
- TDRI is preparing sector specific guidelines
- UTCC is doing a five year master plan with one year, three year and five year horizons

We plan our next submission once these are digested. Working with IAPP on EN versions.

There are many seminars, courses on PDPA preparedness. Without the regulations, none will be complete. We will recommend some.

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

- #3 – Privacy Summit – agenda confirmed, finding a date.
- #4 Cybersecurity and Trust Summit – May or June

Series Supporters included 13 chambers. Please be a Supporter.



Cybersecurity – Subsidiary legislation

Work continues on development of regulations, larger issues:

- 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 held an internal special meeting about Cybersecurity and will hold a second one.

Smart Visas – ‘Freelancer’ and other changes

Reported January. No development.

eCommerce Tax

TRD are running a survey and seeking comments about draft regulations with communication to chambers following the enactment of changes to the Revenue Code. We learned about this only on 19th April.



https://docs.google.com/forms/d/e/1FAIpQLSfR8WOVDIWRTTrJqc6csxOedR1gG5unFBSTNXhHZ_4cy_bKcfw/viewform We ask that chambers consider some common points and propose are organising a special meeting most likely 10am on 29th April.

2017 discussions on the type of tax proposed

Feb 2018 – VAT based tax: Online submission of recommendations

Early 2020: Similar to Feb 2020; third draft. Focus is B2C only; foreign providers with more than THB 1.8m annual revenue in Thailand should register for VAT. Simplified system, or full registration.

October 2020: OECDs BEPS 2.0

Status in Thailand– law passed, in force September 2021 with a Guideline from TRD by May. Focus is B2C, simplified system.

Issues:

- Some unresolved issues (e.g. scope of ‘electronic services’, how to determine that the customer is in Thailand)
- administration/compliance is in line with the OECD guidelines and ‘best practices’ otherwise the world will have multiple models making compliance difficult.
- Filing frequency – quarterly filing instead of monthly is preferred/adopted in other countries
- There should be no requirement to verify the validity of VAT ID number.
- Simplified system is ‘Pay only’ system – no input tax credit; no tax invoice issued. So what does the provider collect if anything? If it is not VAT, then can a surcharge equivalent to VAT be made? Are there rules or accounting practices on what this can be called?

There would be no Permanent Establishment (PE) issues with using the Simplified system, there may and most likely would be with using the full registration system.

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 proposal.

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). The NBTC is in something of a hiatus with few decisions being made.

National Telecom NT (merged CAT and TOT)

Recap: 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. We will bring them to the attention of the new MDES Minister and to NT.



Unfortunately old practices continue. For example to support 5G coverage for EEC, a meeting of state agencies was called along with NT. But NT's 5G holding is small, and what is deployed for retail (via CAT previously) is minor. A better practice (and one prevalent in other ASEAN economies) is to including the whole industry for such national projects, working together.

Telecoms in Myanmar

The situation in Myanmar has deteriorated further and the situation may lead to civil war. Telcos are doing their best to keep the internet open.

GENERAL TOPICS

ECONOMY

Likely GDP upturn 2021 only 2%-3%, assumes tourist arrivals 2m, all in second half (cf 2019 39.8m and 2020 6.7m). Means that pre COVID levels of GDP not likely until 2022 or 2023.

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). The current situation makes this a challenge. We recommend continued good hygiene practices.

AGMs in 2021 for Chambers of Commerce, Trade Associations and other organisations

Background

In 2020, AGMs and other meetings deadlines were formally extended for all organisation types.

In April 2020 (with updated technical rules ready by about May/June 2020) – Electronic meetings were allowed. This is not a temporary measure but a permanent change. This applies to all organisation types, for meetings required by law. Participants do not need to be in Thailand. There are some set up and procedural requirements.

2021 – no similar formal extension such as that in 2020. However Dept of Bus Development (DBD) of MoC has received informal requests for deferral and may consider a blanket extension (see below).

Holdinig a normal in-person AGM would breach social distancing and small gathering requirements.

Options for an AGM:

- Hold an electronic meeting



- Hold it Use proxies if the Organisation considers it proper and it meets the requirements. The idea is a small gathering with many proxies, so that a quorum is established.
- Defer the AGM

Deferral – there does not seem to be any formal permissive regime with DBD. Many organisations are deferring; they may risk a modest (discretionary) fine. Writing to DBD in advance may assist with not being fined and, through practice, may come to be an informal way of indicating that the AGM can be deferred without the Organisation being fined.

Proxies are supported in most Organisations. But some have proxy limits eg own vote + two proxies. In these cases holding a meeting with multiple proxies in order to meet a quorum requirement may not work. For good practices about proxies, we have relevant materials to assist with changing the Organisation's constitution should any chamber or trade association be interested in pursuing the matter.

Notes

'Organisations' here means Chambers of Commerce, Trade Associations, companies, relevant partnerships etc.

Most Organisations have some AGM deadline in their own rules – eg 120 days of end of FY. That is consistent with the law on the matter – eg Trade Associations Act has the same provision.

Next steps

Absent a formal rule, write to DBD to explain why the AGM needs to be deferred and either seek permission or ask that no offence be found or penalty be levied. The COVID19 situation mandates deferral. If an electronic meeting does not suit the Chamber, say so.

DBD is considering the issue. JFCCT can write to K Thosapone (D-G DBD) to propose an extension (draft prepared). Ideally a similar extension as was provided in 2020 would be easier than a request process. Emergency Powers could be used.

Work Permit and Visa

90 day reporting: JFCCT wrote in March to Minister of Interior about the taking down of the on-line reporting facility. There is no explanation for taking it down other than that it was allegedly being 'abused'.

The various follow ups to the WP and V submission immediately after the 16 December BOI – JFCCT session continues. We have updated materials further.

The need for Work Permits was changed by the repeal of the Foreign Employment Act. Labour Decrees (July 2017 as amended by March 2018) replace it. The foreign business community push has been about ease of doing business and not needing unnecessary licences etc. Thus a WP is not needed where a board director for example is not signing financial statements. Thailand's



regional hub policy requires this – many foreigners not ordinarily resident in Thailand are directors of Thailand-incorporated companies. There are other changes effected by the Labour Decrees which relax the need for Work Permits.

Other BOI issues: progressing those reported earlier, when there is a material development it will be reported.

FBA

In parallel to the proposal to suspend List 3 for three years, development of specific areas progresses:

- Logistics
- Services generally including Item 21
- Education
- Engineering
- Agriculture

If interested in joining please contact K Meaw.

Some legal developments: (i) A new plan for better entry/visas etc per press reports; (ii) Digital enablement law (Baker McKenzie has provided details, we are in touch). (iii) Associations law requiring all NGO's / volunteer organisations to register. This will likely be selectively enforced.

Fast track regulatory reform.

See January minutes of time line of developments since September 2020. We are involved with two of the nine subcommittees so far and work with TDRI and others on both.

Our focus – engagement with two sub committees – TDRI people on both with home we work. – Guillotine (JFCCT Dr Charlie, Bob) – meetings in Feb, March took in tourism, MICE and related areas, then focus on wider parts.

Refer to report from Dr Charlie who attends the Guillotine Sub Committee meetings (thanks Dr Charlie!).

As reported, JFCCT has sent a supportive letter to Dr Kobsak, noting a wide group of stakeholders, suggesting areas of focus, and some operational points including a plan for addressing all 1,092 if not, what is the focus?

The Sub Committee is seeking additional support – this is positive as it recognises the challenge.

Our suggestion would be a strong focus on implementing the work done by GU with any updated .developments and focus.



NACC international division is open to an informal, non case specific discussion.

Digitalisation

Track One : Existing main laws (Led by OPDC)

Solving the problem of existing main laws do not support digital usage

- E-payments - some
- E-Court
- E-service/E-License

Also - even existing laws where agencies rarely implement due to their own readiness or other unknown problems! Electronic Transaction Act is relevant. This working group works closely with ETDA and other related government agencies to collect pain points according to this law.

Track Two : New laws (mainly for Platform economy and Smart contract) (Lead by Council of State). New topic with understanding the platform economy and smart contracts – taking in global best practices

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. Budgets and capabilities needed for implementation, but also a change in mindset about the urgent need for implementation.

Meetings: #1 19 Jan, #2/16 Feb; #3 11 March; #4 20 April; #5 11 May. Participation is over 24; others welcome. See 'how to participate' one pager on JFCCT website – Digital Economy/ICT page.

Some Recent Events (since 17 March 2021)

- 18 March – ED lunch meeting – TCEB event planning
- 19 March – JFCCT letter to Dep Perm Sec MDES, on PDPA
- 23 March – EUD update on 5G, cybersecurity, PDPA
- 25 March IAPP webinar on PDPA regulations
- 26 March – EU IP Key on Trade Secrets
- 29 March 2021 – interview on green climate finance – EU initiated
- 30 March – DIP quarterly consultation and update
- 1 April 2021 – 4th meeting Privacy small group roundtable Jointly hosted by Asian Governance Foundation (AGF), German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG), and Facebook Inc:
- 12 April EU-ABC Supervisory Board meeting
- 16 April – ATISA Briefing (with 7th ASEAN protocol)
- 20 April – Digital Economy/ICT #4.



Up coming Events

- World Bank private sector diagnostic on digital investments – likely 28 or 29 April - afternoon
- eCommerce tax special session 29 April 10am
- PDPA public hearing - TBC
- NACC Consultation - informal – proposed for May
- BEING DIGITAL series – Privacy Summit – May
- BEING DIGITAL series – Cybersecurity and On-line Confidence Summit – May/June
- DEEP consultation with Ministry of Education
- 13-16 July Regional Trade Fair AsiaTechX <https://asiatechxsg.com/>; covers <https://www.connectechasia.com/home/> includes CommunicAsia, Broadcast Asia SatelliteAsia, XLR8Asia. (No EUBA event).

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/>