



Effect of EU General Data Protection Regulation (GDPR) to Thailand

GDPR is related to businesses, in particular, internet services must comply with various measures and increasingly strict protection of consumer privacy. For example, the main activities involved in the processing of personal information of the customer must appoint a data protection officer. GDPR also requires businesses, which contain personal information of customers or users, to specify terms of use related to privacy in clear and easily understood language and the company requires user consent to store and use that information.

Any business cannot conclude from the fact that the customer does not dispute the conditions or the customer completes the terms of use for the customer in advance as a legal form of consent from the customer.

One of several new measures the EU will impose under this draft law is the protection of the 'Rights to be forgotten' under Article 1.; This law relates to the right of consumers in Europe. The law states that any personal information on the Internet that is not relevant, obsolete, or of no importance to the company anymore needs to be deleted in accordance with the claim of the person who owns the personal information.

Effect to Thailand and how EU business partners should prepare:

Organizations with European citizenship must follow the GDPR and it is highly possible that Thai companies with links to the EU companies will have to follow the GDPR inevitably. The businesses in Thailand that could be possibly affected by this measure include:

- Hotels that collect tourists' information from EU countries.
- Financial institutions that may have EU customers in the money transactions such as currency exchange, using a Credit Card or using a Mobile Payment.

- Telecommunication companies
- E-commerce websites that collect information of visitors or buy products that may come from the EU.

Thai entrepreneurs will find GDPR difficult because the GDPR clearly defines the export of information, regardless of any country. Thailand must have a protection rule equivalent to or greater than the GDPR. If Thailand does not have good laws, this could mean the losing business opportunities for Thailand with any EU companies.

In case where the destination country does not have a rule equivalent to the GDPR, the relevant data control authority and the data processing authority must be contracted. Also, it must prove that data protection standards including requirements for the responsible person must be complied.

Since the territorial scope in Article 3 of GDPR not only control companies within the EU, but also covers companies that have customers in the EU. The most concerning points is penalties for businesses that do not comply with the EU requirements. An amount of the penalties has a ceiling of up to € 20 million or 4% of the company's worldwide revenues whichever is higher. Therefore, the company in Thailand dealing with EU must be carefully with the GDPR's rules.

Comparison Thai law and GDPR:

Thai law is not yet equivalent to GDPR and there are many issues.

Article 5 of a Personal Data Bill of Thailand, "Personal Information" means information about a person that identifies a person, whether directly or indirectly, but the Bill does not include the name, location, place of business, or business address while Article 4(1) of GDPR includes name, location, place of business, or business address.

The Royal Decree on Digital Asset Business Operation

The Thai Cabinet issued the Royal Decree on Digital Asset Business B.E. 2561 (2018) (the “Royal Decree”) which took effect on 14 May 2018 to regulate offering, issuance of digital tokens and trading of cryptocurrencies and digital tokens (defined as “Digital Assets”) as well as governing operation of exchanges and intermediaries for Digital Assets under the supervision of the Securities and Exchange Commission of Thailand (“SEC”).

There are important points required to be explored as essential issues of the laws which are described below:

A. Types of Digital Assets

Cryptocurrencies and Digital Tokens are digital assets under the Royal Decree with the following meanings:

i) “**Cryptocurrency**” means an electronic data unit built on an electronic system or network which is created for the purpose of being a medium of exchange for the acquisition of goods, services, or other rights, including exchanges between digital assets.

ii) “**Digital Token**” means an electronic data unit built on an electronic system or network for the purpose of specifying the right of a person to participate in an investment in any project or business, or to acquire specific goods, services, or other rights under an agreement between an issuer and a holder.

Digital assets are deemed to be virtual securities.

To enhance effectiveness of supervision, the SEC is empowered to issue rules and regulations regarding offering, issuance of digital assets and operation of digital asset businesses.

B. Digital Asset Offering

An application of digital tokens to the public must be approved by the Office of the SEC. A registration statement and a draft of prospectus must be filed with the Office of the SEC and become effective. The offer must be made through an ICO portal provider.

An offeror of digital tokens must be a private company or a public company incorporated in Thailand and its financial statements must meet the requirements of the SEC similar to those applied to an offeror of securities.

Digital tokens may be offered to institution investors, ultra-high net worth investors, venture capital funds and

private equity funds. Offering to retail investors will be subject to certain limitations e.g. retail offering portion must not exceed four times of the offeror’s shareholders’ equity or 70% of the value of that offer, whichever is higher, and each retail investor may subscribe up to a maximum of THB 300,000.

The offeror must disclose information about the source code of the smart contract technology used to create the digital tokens.

. The draft registration statement and the draft prospectus are divided into 6 parts.

Part 1 on Factsheet; Part 2 on Digital Token Information and the Purpose of Use; Part 3 on Information about Business Plan; Part 4 on Information about Digital Tokens; Part 5 on Digital Token Offering Information; and Part 6 on Data Authentication

After the completion of an offering, an issuer of Digital Tokens has ongoing duties to disclose information to investors and the public. The issuer is required to prepare and submit reports to the Office of the SEC with regard to its financial condition, business operations or any other information which may affect rights and interest of Digital Token holders, investment decision making or the price or value of the digital tokens.

C. ICO Portals

Public offering of digital tokens must be done through the digital token offering system provider or “ICO portal” approved by the Office of the SEC. An ICO portal must be a company incorporated in Thailand with a minimum paid - up share capital of THB 5 million and will be required to undertake the following roles:

- conduct due diligence on the digital token offering, including the qualifications of the offeror and the source code of the smart contract used to create the digital token;

- take reasonable actions to ensure that the offeror will not disclose any material information which is not set out in the registration statement filed with the SEC;

- conduct Know Your Customer (KYC) and investment suitability test on the investors, categories investors and monitor the investment limit applicable to the investors; and comply with certain post-offering

requirements, e.g. notifying the SEC if the offeror uses the proceeds from the offering of digital tokens in a manner which is not consistent with the objectives set out in the registration statement or if there is a change or delay in the project for which the funds were raised.

D. Digital Asset Businesses

Any of operators such as brokers and dealers of any of digital asset businesses must apply and obtain a license from the Minister of Finance.

In undertaking digital asset businesses, the approved operators shall comply with the rules, conditions and procedures as specified in the notification of the SEC; for instance, having adequate sources of capital covering business operation and other several risks, having reliable operating systems and data security systems, maintaining records of assets belonging to individual clients, segregating client assets from their own assets, and conducting Know Your Customer (KYC) and Customer Due Diligence (CDD).

Where any digital asset business is in a situation where its financial condition or operation may cause damage to the public or is in violation of relevant regulations, the Office of the SEC is empowered to order such business to rectify the problem or to temporarily suspend the business operation wholly or partially. In addition, if the digital asset business still fails to comply or has repeated violation, the Minister of Finance, upon recommendation of the SEC, is empowered to revoke business license.

Furthermore, pursuant to section 100 of the Royal Decree, any business operator carrying on digital asset business before this Royal Decree was enacted must file an application for a license within 90 days of the effective of the Royal Decree or within 14 August 2018. (12 and 13 August are public holiday)

E. Prevention of Unfair Trading Practices

Any trading or exchange of Digital Assets on a Digital Asset Trading Centre are subject to restrictions to prevent unfair trading practices similar to those imposed on real securities, including:

- dissemination of false statement in relation to the Digital Assets which may affect the trading prices of or the investors' decision to invest in the Digital Assets;

- publication of an analysis or projection with respect to the Digital Assets by using information with the knowledge that it is false or incomplete, or distorting the information used in the analysis or projection which may affect the trading prices of or the investors' decision to invest in the Digital Assets;

- trading or entering into a derivatives agreement in relation to Digital Tokens while possessing non-public, price-sensitive information regarding the offeror of such Digital Tokens or disclosure of such information; and

- market manipulation activities which result in the public being misled about trading prices or volumes of the Digital Assets or with an intention to stage an abnormality in the trading prices or volumes of the Digital Assets.

F. Tax Matter

Under provisions of the Revenue Code of Thailand, in case of trading Cryptocurrency, profit or capital gain from sale of digital assets is subject to withholding tax at the rate of 15%. A sale of asset or provision of service in relation to the digital assets is subject to VAT.

In the case of a natural person, profit from the sale of digital assets and dividends is subject to withholding tax at rate of 15%. In the case of a company, both the corporate income tax and VAT on digital assets are chargeable.

G. Penalty

Pursuant to sections 57 to 59 of the Royal Decree, the law has imposed penalties for non-compliance in both criminal and civil cases. In case a vendor who is not allowed or does not act through a legal intermediary, a penalty for this violation is imprisonment of not more than 2 years or a fine not more than 2 times of the sale price of all tokens sold and the fine must not be less than 500,000 baht, or both.

In case the information in the prospectus is false, an offender will be punished by imprisonment not exceeding 5 years or fine not more than 2 times of the sale of all tokens sold. The sale of tokens during the SEC's suspension of fire is punishable by imprisonment not exceeding 2 years or a fine not exceeding two times the value of the offering or both.

Recently updated with Transfer Pricing Bill

Transfer pricing Bill aim to solve the transfer pricing between related companies which intends to avoid the taxes burden. Revenue of the first company is transferred to be revenue of the second company in the same affiliated companies which is located in zero or low taxes rates in order to avoid the taxes liability for the first company in its home jurisdiction.

These activities may intervene the tax system and affect both domestic and international tax impositions. With that reason, it is inevitable for the Revenue Department to have the tax measurement to deal with the transfer pricing problems.

The transfer pricing guidelines are provided by Thai Revenue Department instruction No. Por 113/2545. However, The lack tax provisions of the Revenue Code.

The progress of the Transfer Pricing Bill

On May 2015; Thai cabinet approved Transfer Pricing Bill.

From 19 June 2017 to 7 July 2017; the Revenue Department issued the online public hearing in relation to Transfer Pricing Bill.

The key points of the Bill are provided in sections 71 bis, 71 ter and 35 ter

- a tax officer is authorized to adjust the assessable income and allowable deductions of an entity that entered into a transaction with another related entity which is different from a transaction with commercial and financial conditions between independent parties.

- The definition of the 'Related Entity or Related Juristic Partnership' is consistent with the Departmental Instruction No. Por 113/2545, and it has been expanded to include at least 50% direct and indirect shareholdings.

- An entity with any related party transaction which has income exceeding the threshold will be required to submit a report outlining the nature/relationship and quantum of the related parties' transactions within the annual tax return filing deadline and submit the transfer pricing documentation within 60

days or the extended period of 120 days upon the receipt of notification from the tax authority.

- An entity may request a tax refund within three years from the tax return submission date or within 60 days after the receipt of an adjustment notification from a tax officer.

- An entity that fails to comply with Section 71 ter or submits incomplete or incorrect

documentation without reasonable explanation may be subjected to penalties.

On 3 January 2018; There was a meeting of the Thai cabinet. The recent Bill has been revised to include additional requirements as outlined below:

- The minimum income threshold for taxpayers in an accounting period to be eligible for the exemption from preparing a report on relationship between companies and the amount of related party transactions (collectively referred to as "transfer pricing disclosure

form") will be less than 30 million baht.

- The new transfer pricing Bill be applicable for accounting periods beginning on or after 1 January 2019 which results in the first filing date of the transfer pricing disclosure form to be on 31 May 2020 (for a period from 1 January to 31 December 2019).

- The statutory limitation period, for a tax officer to request for the related entities to submit the report and relevant documents required for analyzing the transaction of the related entities, also known as transfer pricing documentation, is within 5 years from the date of submission of the transfer pricing disclosure form

On 5 June 2018; Thai cabinet proposed the Transfer Pricing Bill to the National Legislative Assembly of Thailand.

Derivative Property Right Bill

Under Derivative Property Right Bill, an owner of a plot of land or a condominium unit must register the plot of land or the condominium unit at a land office to receive a certificate of derivative property right. The Derivative Property Bill, if passed into an Act, would increase the benefits and flexibility of property arrangements by

allowing for greater flexibility in land usage to improve the national economy and also boosting investor confidence in the economy. This Bill will attract more investment since the derivative property right could be used for doing business in Thailand. The key point is to provide a holder of the derivative property right over the property to use land and building or the property by way of letting, sale or transfer within the maximum term of 30 years.

In addition, the derivative property right can also be used as collateral for performance of debts.

Furthermore, the holder of the derivative property right can renovate or modify the building without the permission of the owner, unless it is otherwise provided for in the contract. When the contract is terminated, the property that is renovated, or modified will belong to the owner of the property.

The derivative property right agreement must be made in writing and registered at a land office.

The Eastern Economic Corridor (EEC)

Eastern Economic Corridor Development Act or the EEC Act became effective on 15 May 2018.

The Office of the EEC is set up to promote Eastern Economic Corridor Development which represents a significant milestone of the new development after the development of the Laem Chabang Industrial Estate and the Map Ta put Industrial Estate.

Eastern Economic Corridor (EEC) provinces cover Chachoengsao, Chonburi, and Rayong provinces in eastern Thailand (and other provinces to be announced later by a royal decree).

There are ten targeted industries for the EEC: next-generation automotive, intelligent electronics, tourism for high-income tourists and medical tourism, advanced agriculture and biotechnology, food processing, advanced robotics industry, logistics and aviation, biofuels and biochemical, digital, and holistic medical and health services.

The significant benefits that are provided for business operators in the EEC.

1. Exemption from corporate income tax: Under BOI promotion, an operator who receives promotional privileges in any of targeted businesses will be exempted from corporate income tax from 8 to 13 years depending upon a type of business and technology used. If business is operated in the EEC provinces, it will be exempted from corporate income tax for a further 2 years, therefore, which means that the business will be exempted up to 15 years. Furthermore, the company also received a 50% reduction in corporate income tax for the net profit for another 5 years. An operator promoted in the EEC is also exempted from import duty on machinery and raw materials which are imported to manufacture products in Thailand.

2. Permission to own land and apartment: A foreign business operator within the EEC special economic zone are allowed to own land to operate the approved business activities in the EEC special economic zone, without seeking approval under the Land Code, and a foreign individual has the right to own and live condominium units in the EEC special economic zone.

If a company owning land does not operate the business within 3 years or stopped its operation, the land must be sold within one year. Otherwise, the Office of the EEC has the power to dispose of the land.

3. The Office of the EEC allows a foreign business operator to bring foreigners with certain professions or knowledge to work and live in Thailand. This clause is extended to their family.

In addition to the BOI privileges, the Government of Thailand also issued the Royal Decree (No. 641) to the effect that an income received by any of executives, experts or researchers of a promoted company is chargeable to person income tax at a reduced rate of 17% of the income.

4. An operator in the EEC special economic zone is exempted from the exchange control law and can use foreign currency for payment for goods and services between business operators in the EEC area.

5. A promoted operator has the right to lease land in the EEC special economic zone for up to 50 years to develop and promote the target industries, and this right can be renewed for 49 years afterwards.

EEC Development Plan under scheme of Thailand 4.0 aims to revitalize and enhance the well-known Eastern Seaboard Development Program that have supported Thailand as a powerhouse for industrial production in Thailand for over 30 years.

Should you have any question, please do not hesitate to contact us via:

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