

Tentative Translation¹

The Digital Council of Thailand Act,

B.E. 2562 (2019)

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun

Given on the 26th Day of April B.E. 2562;
Being the 4th Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to have an enabling act on the law concerning Digital Council of Thailand.

This Act contains certain provisions in relation to the restriction of rights and freedom of a person, which section 26 and section 33 of the Constitution of the Kingdom of Thailand so permit by virtue of the law.

The rationale and necessity to restrict the rights and freedom of a person in accordance with this Act is that in order for the Digital Council of Thailand to achieve the objectives of its establishment, in certain circumstances, it needs supervision from government authorities to support cooperation between the public and private sectors, which will be beneficial for the development of the digital economy and society. The enactment of this Act is consistent with the criteria prescribed under section 26 of the Constitution of the Kingdom of Thailand.

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly acting as the parliament, as follows:

Section 1 This Act is called the "Digital Council of Thailand Act, B.E. 2562 (2019)."

Section 2² This Act shall come into force on the day following the date of its publication in the *Government Gazette*.

Section 3 In this Act,

"Digital" means technology that uses the symbols zero and one or other symbols, to substitute things in order to form or create systems for human use;

¹ Translated by Baker McKenzie under contract for the Office of the National Digital Economy and Society commission. – Tentative Version – subject to final authorisation by the Office of the National Digital Economy and Society commission

² Published in Government Gazette, Vol. 136, Part 56a, dated 30th April 2019

"Digital Business or Industry" means a business or an industry regarding the production, development, distribution, or service of electronic hardware and software components, Digital services, Digital content, or infrastructure services for Digital communication, as per the details in the Regulations;

"Council" means the Digital Council of Thailand;

"Regulations" means the regulations of the Digital Council of Thailand;

"Member" means a member of the Digital Council of Thailand;

"Committee" means the Digital Council of Thailand Committee;

"Director" means a director of the Digital Council of Thailand;

"Officer" means an officer or employee of the Digital Council of Thailand;

"Competent Official" means a state officer of the Ministry of Digital Economy and Society appointed by the Minister to perform under this Act;

"Minister" means the Minister acting under this Act.

Section 4 The Minister of Digital Economy and Society shall take charge under this Act, and is authorized to appoint Competent Officials and undertake activities to perform under this Act.

Chapter 1

The Establishment of the Council

Section 5 The Digital Council of Thailand shall be established as a juristic person, with objectives and duties prescribed in this Act.

Section 6 The objectives of the Council are as follows:

(1) to be a representative of Members who carry on Digital Business or Industry in the offering of opinions, coordination and support for policy-relevant affairs between the public and private sectors in connection with Digital Business or Industry;

(2) to offer opinions and suggestions regarding law and regulations in connection with Digital Business or Industry to the public sector;

(3) to promote, support and improve the potential of Digital Business or Industry to compete at an international level;

(4) to promote the improvement of digital-relevant personnel's skills to an international level;

(5) to promote and supervise the quality, standards and ethics of Digital Business or Industry, and to regulate its Members to comply with the Regulations and law regarding Digital Business or Industry;

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(6) to undertake other activities to support the development of Thailand's Digital Business or Industry, or as assigned by relevant public-sector agencies.

Section 7 The Council is prohibited from the following acts:

(1) operating an enterprise, operating an enterprise of any person, holding shares in a partnership or a joint-venture in a Digital enterprise with any person, unless the engagement in that enterprise is aimed to achieve the Council's objectives under section 6 and approved at a general meeting;

(2) carrying out any acts that may destroy competition in a normal course of the operation of a Digital enterprise;

(3) carrying out any acts that may threaten the country's economy and stability, or public order or good morals;

(4) giving or lending money to Member or other people, unless the lending is aimed to aid an Officer or the family of an Officer, in accordance with the Regulations, or for public charity, moral duties, or with the requirements of social propriety;

(5) obstructing or preventing other persons qualified to be Members under the Act and the Regulations to be Members that is contrary to the Act or the Regulations;

(6) sharing profits or income with Members;

(7) any acts regarding political activities.

Section 8 The headquarter of the Council must be located in Bangkok, whereas branch offices may be established in other provinces if necessary.

The establishment of branch offices under paragraph one must comply with the Regulations.

Section 9 The Council may earn income from:

(1) registration fees, subscription fees and other fees collected from its Members;

(2) remuneration and service fees obtained from services provided for Members or third-parties;

(3) donations of money and assets;

(4) money, benefits, and other assets generated through the Council's operations;

(5) profits and benefits generated through the money and assets under (1), (2), (3) and (4).

Section 10 Except for the Council, no person can use the emblem or the Thai title of the "Digital Council of Thailand," or the shortened term as the "Digital Council," or any foreign letters that can be defined or pronounced as the "Digital Council of Thailand," or any similar name that will mislead people to believe that it is part of the Council, without consent from the Council.

Chapter 2 Members

Section 11 There are three types of Council Members:

- (1) ordinary member;
- (2) extraordinary member;
- (3) honorary member.

The rights and duties of members are prescribed in the Regulations.

Section 12 Ordinary members include:

- (1) juristic persons incorporated under Thai law and carry on Digital Business or Industry;
- (2) associations incorporated under Thai law with objectives regarding the promotion of or support for Digital Business or Industry. More than half of the all association's committee and more than half of the all association's members must have Thai nationality.

Section 13 Extraordinary members include natural persons who carry on Digital Business or Industry.

Section 14 Honorary members include individuals invited by the Committee to be honorary members, selected from:

- (1) specialists in Digital Business or Industry;
- (2) specialists in educational institutions that provide Digital-relevant programs;
- (3) advocates for the Council or the country's Digital Business or Industry.

Chapter 3 The Committee

Section 15 The Digital Council of Thailand Committee shall be established, which must be elected from representatives of ordinary members at a Council general meeting.

Directors under paragraph one shall elect one of them as the president of the Council, one or more as the vice presidents of the Council, one as the secretary-general of the Council, and other positions prescribed in the Regulations.

The secretary-general of the Council shall be the secretary of the Committee.

The number and proportion of Directors categorized based on the types of Digital Business or Industry, and the election procedures under paragraph one, and the procedures for the election of the president of the Council, one or more as the vice president of the Council, the secretary-general of the Council, and other positions under paragraph two shall comply with the Regulations.

Section 16 Directors must have the following qualifications and not have the following prohibited characteristics:

- (1) have at least five years' experience in Digital Business or Industry;
- (2) be representatives for ordinary members that have been Members of the Council for at least one year;
- (3) be representatives for ordinary members that have submitted financial statements to the Ministry of Commerce or the Revenue Department for a period of the three most recent consecutive years, and have their financial statements audited by a certified auditor for a period of the three most recent consecutive years;
- (4) must not be Officers;
- (5) must not being bankrupt or having been dishonestly bankrupt;
- (6) must not hold any political positions, or be government or local officials with permanent positions or fixed monthly salaries, officers or persons working in a state enterprise or a public-sector agency, local administrators or members of local councils, or officials defined under local government law, including employees in administrative agencies, state enterprises, or public-sector agencies, and a person or persons who has the authority or are authorized to exercise state administrative powers to do any act under the prescription of law, including an establishment in a government system, a state enterprise, or other state operations, unless they have vacated the positions at least one year;
- (7) must not be persons of unsound mind, or with mental infirmity;
- (8) must neither be incompetent nor quasi-incompetent;
- (9) must never have been sentenced to imprisonment with a final judgement, unless an offence committed by negligence or misdemeanors.

Section 17 Directors shall hold office for a term of two years and may be re-elected.

The president of the Committee cannot hold office for more than two consecutive terms.

Section 18 In addition to vacating office as described in section 17, Directors vacate office in the case of:

- (1) death;
- (2) resignation;

(3) a resolution of a Council general meeting with at least a two-third vote of the ordinary members present at the meeting;

(4) cessation of being a representative for an ordinary member, or the ordinary member's cessation of its membership;

(5) disqualification or possession of any of the prohibited characteristics described in section 16;

(6) the Minister's order to vacate office under section 36.

Section 19 If a Director described in section 15 vacates his office before the end of his term, the Committee shall summon a meeting to elect a representative for the ordinary member to be a Director within sixty days. If the remaining term is less than one hundred and eighty days, the Committee may or may not summon a meeting to elect a representative.

The person elected as the representative under paragraph one shall stay in the position only for the remaining term of the person he replaces.

Section 20 If all Directors vacate office for reasons other than the vacancy of the all Committee described in section 36, the Directors who have vacated office shall remain acting in their positions as necessary to maintain the continuity of the Council's affairs until a new Director takes office.

The Directors who have vacated office under paragraph one must summon a Council general meeting to elect a new Committee under section 15 within thirty days after the date of the vacancy.

If vacancies in the Committee are so numerous that a quorum cannot be formed under section 22, the remaining Directors may act only to summon a Council general meeting to elect Directors under section 15.

Section 21 The Committee has power and duties to make policies and undertake the Council's affairs to comply with Council's objectives specified in section 6. The Committee also has power and duties as followings:

(1) to coordinate, on behalf of policy-related operators of Digital Business or Industry, in the aspect of policy and to carry on the operation of Digital Business or Industry with the government and public-sector agencies, and to explore and take part in the drive for solutions on issues and effects to economy and society in relation to the Digital Business or Industry of the country;

(2) to support the government's operation in matters relevant to and beneficial for the Digital Business or Industry;

(3) to consult and give advice regarding operations of the Digital Business or Industry;

(4) to carry on with operators of the Digital Business or Industry regarding the exchange of opinions, business and industry cooperation, solutions to relevant issues, and the exchange of Digital knowledge with domestic and international organizations to support the development of Digital economy;

(5) to appoint advisors and subcommittees to carry on any activity assigned by the Committee;

(6) to seek and propose a certified auditor for approval and appointment at a general meeting, and to ensure that the statements of revenues and expenses and financial statements are audited by a certified auditor and proposed for approval at a general meeting;

(7) to implement the Regulations on the following matters:

(a) the categorization of Member groups based on the characteristics or location of their operations of the Digital Business or Industry, the election of committee of Member groups, the meeting and operations of Digital operating branches, and other relevant activities;

(b) the determination of details regarding the Digital Business or Industry;

(c) the determination of rules and procedures for an application for membership, the rights and duties of Members, qualifications, disciplinary actions and punishments on Members, the expiration of membership, and the appeal;

(d) the determination of registration fees, membership fees, subscription fee, remuneration, and service fees that will be collected from Members or third-parties;

(e) the determination of the number and proportion of Directors categorized based on the types of the Digital Business or Industry, the procedures for the election of Directors, and the procedures for the election of the president of the Council, vice president of the Council, secretary-general of the Council, and other positions, including the positions and the duties of Directors in each position;

(f) Committee meetings, Committee's activities, and Council general meetings;

(g) the establishment and operations of the Council's branch offices;

(h) the placement, the appointment, the removal, the assignment of a position, and the determination of salary, wages, rewards for Officers, and disciplines, punishments for, and complaints from Officers;

(i) disbursements and saving of all types of money;

(j) assistance for Officers and their families, and Officers who have vacated office;

(k) other matters necessary for the Council's operations.

The determination of or amendments to any provisions in (7) must be approved by the Council at a general meeting. Once approved, these Regulations must be presented to the Minister for acknowledgement.

Section 22 No fewer than half of all Directors must be present to form a quorum for a Committee meeting.

The president of the Council shall preside at a meeting. If the president of the Council is absent or unable to perform his or her duty, the vice president of the Council shall preside at the meeting. If the vice

president of the Council is absent or unable to perform his or her duty, the attendees must elect one of the Directors to chair the meeting.

A resolution of a Committee meeting shall be made by a majority of votes from Directors present at the meeting. Each Director is entitled to one vote. If the votes are equal, the chairperson of the meeting shall have an additional vote as the decisive vote.

At a Committee meeting, if a consideration regarding a Director, or the interests of a Director or a Member represented by the Director is discussed, the Director has the right to give an explanation on such subject matter but shall not be entitled to the cast a vote.

Section 23 For matters involving third-parties, the president of the Council will represent the Council. In such event, the president of the Council may authorize a Director in writing to act on his or her behalf. To grant this authority, the scope of assigned duties and power must be clearly indicated.

Matters involving third-parties must be handled in accordance with the Regulations.

Chapter 4 **The Council's Businesses**

Section 24 A Committee general meeting shall be held once a year. These general meetings are called "general meetings."

Other meetings than those described in paragraph one are called "extraordinary meetings."

Section 25 At a general meeting, at least the following matters must be included in the agenda:

- (1) consider and give opinions on the report on Thailand's economic situation and Digital products in comparison with international;
- (2) certify annual report presenting the Council's performance in the previous year;
- (3) consider the report on the assessment of the Council's performance in the previous year;
- (4) consider and approve the Council's annual financial statements certified by a certified auditor;
- (5) consider and approve the Committee's policies, and the Council's operating plans and annual budget;
- (6) appoint a certified auditor, and determine his or her remuneration.

Section 26 The Committee may summon an extraordinary meeting any time as necessary.

No fewer than one-tenth of total ordinary members may issue a written request for the Committee to summon an extraordinary meeting. The purposes of the meeting must be specified in the request.

If ordinary members request that an extraordinary meeting shall be summoned under paragraph two, the Committee must summon it within thirty days after the date of its receipt of the request.

Section 27 No fewer than one-quarter of total ordinary members must be presented to form a quorum for a Council general meeting.

The president of the Council shall preside at meetings. In the case where the president of the Council is absent or unable to perform his or her duty, the vice president of the Council shall preside at the meeting. In the case where the vice president of the Council is absent or unable to perform his or her duty, the Members present at the meeting must elect one of the Directors to chair the meeting.

An ordinary member may give the power of attorney to authorize another person to attend the meeting and vote on his or her behalf in accordance with the Regulations.

A decision made at a meeting shall be made by a majority of votes from ordinary members present at the meeting. Each Member is entitled to one vote. If the votes are equal, the chairperson of the meeting shall have an additional vote as the decisive vote.

Section 28 Extraordinary and honorary members acquire rights to attend a Council general meeting but shall not have the casting vote. They may grant the power of attorney to authorize other persons to attend the meeting and give opinions on their behalf in accordance with the Regulations.

Section 29 If ordinary members fail to form a quorum at a general meeting, the meeting may be postponed one more time. The president of the Council must notify Members of the new meeting date at least fifteen days prior to the date of the rescheduled meeting. At the rescheduled general meeting, a quorum is deemed to be present regardless of the number of ordinary members attending the meeting, but only the activities specified in section 25 shall be undertaken. However, consideration and approval of the Committee's policies, annual operating plans, and budget only in connection with the fulfillment of the Council's policies under section 25 (5) requires a quorum of ordinary members as prescribed in section 27.

Section 30 If ordinary members fail to form a quorum for an extraordinary meeting that is held upon their request, the meeting must be cancelled. If ordinary members fail to form a quorum for an extraordinary meeting that is held for other reasons than their request, the meeting must be postponed, and the president of Council must re-summon the extraordinary meeting within forty-five days. At the rescheduled extraordinary meeting, a quorum is deemed to be present regardless of the number of ordinary members attending the meeting. However, a quorum of ordinary members is required as prescribed in section 27 for the following matters:

- (1) a resolution to remove a Director as prescribed in section 18 (3);
- (2) the consideration and approval of the Regulations as prescribed in section 21 (7);
- (3) the consideration and approval of the Committee's policies, annual operating plans, and budget only in connection with the fulfilment of the Council's policies under section 25 (5).

Section 31 The Committee must prepare and present an annual report presenting its performance and the performance of the Council in the previous year, the explanation of the policies, and annual financial statements certified by a certified auditor to a general meeting within one hundred and

twenty days after the end of each calendar year. The copies of these documents must be submitted to the Minister for acknowledgement within thirty days after the date of the approval from the general meeting.

Section 32 The auditor described in section 31 shall be selected from auditors certified under the laws governing the accounting profession and appointed at a general meeting, and must not be a Director, an Officer or a Competent Official.

The auditor has the power to examine account books and other evidentiary materials of the Council, and to request explanation from the president of the Council, a Director, an Officer or a Competent Official.

The auditor shall receive remuneration as determined in a general meeting.

Chapter 5

Government Supervision

Section 33 The Minister has the power to do the following acts:

- (1) order Competent Officials to investigate the operations of the Council;
- (2) issue a written order requesting that the Committee give explanation and facts as to the Council's businesses, and to submit documents regarding the Committee's operations or minutes of Committee meetings;
- (3) issue a written order requesting that the Council or the Committee restrain or correct any acts that contrary to the law, government policies, cabinet resolutions, or the Regulations. Once an order has been issued, a notice must be submitted to the cabinet for acknowledgement.

Section 34 To fulfill the order of the Minister issued under section 33, Competent Officials have the power to examine documents or evidentiary materials at the Council's office during business hours, or to request that relevant individuals provide explanations to Competent Officials upon request.

Relevant individuals shall facilitate the performance of duty by Competent Officials as described in paragraph one as appropriate.

Section 35 To perform their duty as described in section 34, Competent Officials shall present their identification cards to relevant individuals.

Competent Officials' identification cards shall comply with the form determined by the Minister.

Section 36 If it appears that the Council or the Committee fails to comply with the Minister's order issued under section 33, or that it performs any acts that are non-compliant with the Council's objectives, or that are harmful for the country's economic and stability systems, or public order or good morals, the Minister, with approval from the Cabinet, has the power to order the all Committee or any of the Directors to vacate office.

A Director who has vacated office under paragraph one cannot reclaim his or her position in the Committee in the first five years after the date of the Minister's order to vacate office.

Section 37 If the Minister orders the all Committee to vacate their offices under section 36, he or she must appoint at least thirteen persons but no more than twenty persons representing the Council's ordinary members to be interim Committee within thirty days after the date of the Minister's order for the all Committee to vacate their offices.

The interim Committee described in paragraph one shall have the power and duties to undertake the Council's businesses only as necessary. It must summon a Council general meeting to elect Directors under section 15 within one hundred and twenty days after the date of Minister's order to establish the interim Committee. Once the new Committee has taken office, the interim Committee appointed by the Minister must vacate their offices.

Chapter 6 Punishment

Section 38 If the Council violates the provision in section 7, it shall be liable to a fine not exceeding Baht two hundred thousand.

Section 39 If the Council has committed and been found liable for a wrongdoing that was committed upon an order from or as an act of a Director, or if a Director who was in charge of an order or act, and omitted to act, or failed to order or act, and the failure resulted in a wrongdoing by the Council, that Director shall be liable to a fine not exceeding Baht one hundred thousand.

Section 40 Any person who violates the provision in section 10 shall be liable to imprisonment for a term not exceeding one month, or a fine not exceeding Baht ten thousand, or both; and a fine of Baht ten thousand per day until cessation of the use.

Section 41 Any person who obstructs, or fails to provide explanation to or facilitate Competent Officials on duty under section 34 shall be liable to a fine not exceeding Baht five thousand.

Transitional Provision

Section 42 Once this Act has come into force, the Thai Federation of ICT Technology Association, which was established in accordance with the Civil and Commercial Code, will be repealed, and the businesses, assets, rights, and liabilities thereof that were available as of the date of the publication of this Act in the *Government Gazette* will be transferred to the Council from the date on which this Act comes into force.

Section 43 Officers and employees of the Thai Federation of ICT Technology Association, which was established in accordance with the Civil and Commercial Code, who were employed before this Act came into force, will be Officers of the Council. The term of employment of these Officers by the Thai Federation of ICT Technology Association will be deemed the term of employment by the Council from the date on which this Act comes into force.

Section 44 The Thai Federation of ICT Technology Association Committee, which was established in accordance with the Civil and Commercial Code, who had been holding office as of the date of the publication of this Act in the *Government Gazette*, together with six specialists who are not Members of the Council and who have knowledge and expertise in mass communication, society, digital law, the healthcare industry, economics, and the promotion of citizen's rights, one specialist in each field, as nominated by the Thai Federation of ICT Technology Association and appointed by the Minister will constitute the first Committee of the Council, with the power and responsibilities to act as prescribed in section 21 (1), (2), (3), (4) and (6), to implement the Regulations as prescribed in (7) (a), (b), (c), (d), (e), (f), and (g) with temporary effect, and to do other acts only as necessary to comply with this Act. It must also be open for applications for membership and summon a Council general meeting to establish a new Committee under section 15 within one hundred and eighty days after the date on which this Act comes into force.

To fulfill the acts prescribed in paragraph one, the Minister may extend the timeframe for thirty more days each, if necessary. Together, the total extended period must not exceed sixty days.

Once Directors have been elected under paragraph one, the newly-established Committee must summon a Committee meeting within thirty days after the date of the election in order to fulfill the obligations in section 15 paragraph two.

After the obligations prescribed in paragraph three have been completed, the initial Committee must vacate office.

Section 45 On the election of the new Committee in section 44 paragraph one, the Council membership term under section 16 (2) shall not apply to representatives for ordinary members who are elected as Directors..

Section 46 Members of the Thai Federation of ICT Technology Association who have valid membership as of the date of the publication of this Act in the *Government Gazette* will be Members of the Council under this Act.

Countersigned by
General Prayuth Chan-ocha,
Prime Minister

Remarks :- The reason for the enactment of this Act is that the development of digital innovations have an important role in the improvement of the country's potential and competitiveness. Digital innovations have changed rapidly, and have direct effects on people and society. Therefore, it is appropriate for Thailand to establish the Digital Council of Thailand, in which private entities in digital businesses or digital industries with readiness in terms of workforce, expertise, direct experience, and familiarity with and understanding of consumer behavior collaborate. This will act as a key organization to cooperate between the government and other private-sector agencies to support the creation and development of digital innovations, which will lead to improved competitiveness, the development of digital-related personnel, and the application of digital innovations in Thailand for the sustainable development of the country and thus the Act is necessary to be enacted.

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