

[Official Emblem of Royal Command]

The Digital Council of Thailand Act, B.E. 2562 (2019)

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun

Approved the Act on 26 April
2019, the fourth year of the present
reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun hereby issues a royal command to officially announce that Digital Council of Thailand law should be enacted.

This Act contains certain provisions regarding the limitation of a person's rights and liberty, which is allowed under section 26 and section 33 of the Constitution of the Kingdom of Thailand by virtue of legal provisions.

The reason and necessity for the limitation of a person's rights and liberty under 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 conditions prescribed in section 26 of the Constitution of the Kingdom of Thailand.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun hereby issues a royal command that the Act be enacted, with advice and consent from the National Legislative Assembly acting as the parliament, as per the following details.

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

Section 2 This Act shall come into force the day after 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;

"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;

"Board of Director" means the Digital Council of Thailand

Committee;

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

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

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

"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 officials and undertake activities to perform the duties 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 in 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 supervise that its members comply with the Regulations and law regarding Digital Business or Industry; and

(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 enterprise or an enterprise of another person, or holding shares in a partnership or a joint-venture in a digital enterprise with another 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) any acts that may destroy competition that ought to incur in digital businesses;

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

(4) giving or lending money to another member or other people, unless the lending is aimed to aid an employee or the family of an employee, 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 incomes with other members; and

(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; and

(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 short term the "Digital Council," 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 members;

(2) extraordinary members; and

(3) honorary members.

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; and
- (2) associations incorporated under Thai law with objectives regarding the promotion of or support for Digital Business or Industry. More than half of the whole association's Director and more than half of the whole association's members must have Thai nationality.

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

Section 14 Honorary members include individuals invited by Board of Director to be honorary members, selected from:

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

Chapter 3 Board of Director

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

Director under paragraph one shall elect one of them as Chairman of the Council, one or more as the vice chairman of the Council, one as the secretary-general of the Council, and other persons to hold other positions prescribed in the Regulations.

The secretary-general of the Council shall be the secretary for Board of Director.

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

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

- (1) Director must have at least five years' experience in Digital Business or Industry.
- (2) Director must be representatives for ordinary members that have been the members of the Council for at least one year.
- (3) Director must be representatives for ordinary members that have submitted financial statements to the Ministry of Commerce or the Revenue Department for at least the three most

recent consecutive years, and have their financial statements audited by a certified auditor for at least the three most recent consecutive years.

(4) Director must not be employees

(5) Director must neither be bankrupt nor have been fraudulent bankrupts.

(6) Director must not hold any political positions, or be government or local officials with permanent positions or fixed monthly salaries, employees 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 before joining Board of Director.

(7) Director must not be persons of unsound mind, or with mental infirmity.

(8) Director must neither be incompetent nor quasi-incompetent.

(9) Director must never have been sentenced to imprisonment with a final judgment, unless they were punished for an offence committed out of negligence or a misdemeanor

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

Chairman of Board of Director cannot hold office for more than two consecutive terms.

Section 18 In addition to the vacating office described in section 17, Director 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;
or

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

Section 19 If Director described in section 15 vacates his office before the end of his term, Board of Director shall summon a meeting to elect a representative for the ordinary member to

be Director within 60 days. If there are fewer than 180 days remaining in the member's term, Board of Director 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 Board of Director vacate office for reasons other than the vacancy of the entire Board of Director described in section 36, Director who have vacated office shall remain acting in their positions as necessary to maintain the continuity of the Council's affairs until a new Board of Director takes office.

The Director who have vacated office under paragraph one must summon a Council general meeting to elect a new Board of Director under section 15 within 30 days after the date of the vacancy.

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

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

(1) on behalf of operators of Digital Business or Industry, to coordinate in policy-related activities, to communicate with the government and public-sector agencies regarding operations of Digital Business or Industry, 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 give consultancy and 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 subcommittee to carry on any activity assigned by Board of Director

(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; and

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

(a) the categorization of members based on the characteristics or location of their operations of the Digital Business or Industry, the election of Director 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 there against;

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

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

(f) Board of Director meetings, Board of Director's activities, and Council general meetings;

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

(h) the approval for a position; the appointment of; the removal of; the assignment of a position for; and the determination of salary, wages, awards and remuneration for employees; and the disciplinary actions against, punishments for, and complaints from employees;

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

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

(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 general meeting. Once approved, these rules and regulations must be presented to the Minister for acknowledgement.

Section 22 No fewer than half of total Director must be presented to form a quorum for Board of Director meeting.

Chairman of the Council shall preside at a meeting. If Chairman of the Council is absent or unable to perform his or her duty, the Vice chairman of the Council shall preside at the meeting. If the Vice chairman of the Council is absent or unable to perform his or her duty, the attendees must elect one of Director to chair the meeting.

A resolution of a Board of Director meeting shall be made by a majority of votes from Director 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 final-decision vote.

If a consideration regarding a Director, or the interests of a Director or a member represented by the Director is discussed at Board of Director meeting, the Director has the right to give an explanation in such subject matter but shall not have the casting vote.

Section 23 For matters involving third-parties, Chairman of the Council will represent the Council. In this event, Chairman of the Council may authorize a Director in writing to act on his or her behalf. To grant this authority, the scope of assigned duty, 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 Board of Director 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) the consideration of and opinions on the report on Thailand's economic situation and digital products in comparison with international;
- (2) the affirmation of the annual report presenting the Council's performance in the previous year;
- (3) the consideration of the report on the assessment of the Council's performance in the previous year;
- (4) the consideration and approval of the Council's annual financial statements certified by a certified auditor;
- (5) the consideration and approval of Board of Director's policies, and the Council's operating plans and annual budget; and
- (6) the appointment of a certified auditor, and the determination of his or her remuneration.

Section 26 Board of Director may summon an extraordinary meeting any time as necessary.

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

If ordinary members request that an extraordinary meeting be summoned under paragraph two, Board of Director must summon it within 30 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.

Chairman of the Council shall be a Chairman at a meeting. In the case where Chairman of the Council is absent or unable to perform his or her duty, the vice Chairman of the Council shall preside at the meeting. In the case where the Vice chairman of the Council is absent or unable to perform his or

her duty, the members present at the meeting must elect one of Director 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 final-decision vote.

Section 28 Extraordinary and honorary members acquire rights to attend a Council general meeting but shall not have the casting vote. They may give the power of attorney to authorize another person 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 be postponed one more time. Chairman of the Council must notify members of the new meeting date at least 15 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 proceeded. However, the consideration and approval of Board of Director's policies, annual operating plans, and budget only in connection with the fulfilment 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 Chairman of Council must re-summon the extraordinary meeting within 45 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); and
- (3) the consideration and approval of Board of Director's policies, annual operating plans, and budget only in connection with the fulfilment of the Council's policies under section 25 (5).

Section 31 Board of Director 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 120 days after the end of each calendar year. The copies of these documents must be submitted to the Minister for acknowledgement within 30 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. He or she must not be a Director, an employee or an official.

The auditor has the power to examine account books and other evidentiary materials of the Council, and to request explanation from Chairman of the council, a Director, an employee or an 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) to order officials to investigate the operations of the Council;

(2) to issue a written order requesting that Board of Director give explanation and facts as to the Council's businesses, and to submit documents regarding Board of Director's operations or minutes of Board of Director meetings; and

(3) to issue a written order requesting that the Council or Board of Director restrain or correct any acts that contrary to 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, 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 upon request.

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

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

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

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

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

Section 37 If the Minister orders the entire Board of Director to vacate their offices under section 36, he or she must appoint at least 13 persons but no more than 20 persons representing the Council's ordinary members to be interim Board of Director within 30 days after the date of the Minister's order for the entire Board of Director to vacate their offices.

The interim Board of Director described in paragraph one shall have the power and duties to the Council's businesses only as necessary. It must summon a Council general meeting to elect Director under section 15 within 120 days after the date of Minister's order to establish the interim Board of Director. Once the new Board of Director has taken office, the interim Board of Director 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 THB 200,000.

Section 39 If the Council has committed and been liable to 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 omitted to act or failed to so order or act, and the failure resulted in a wrongdoing by the Council, that Director shall be liable to a fine not exceeding THB 100,000.

Section 40 Any person violates the provision in section 10 shall be liable to an imprisonment for a term not exceeding one month, or a fine not exceeding THB 10,000, or both; and a fine of THB 10,000 per day until cessation of the use.

Section 41 any person who obstructs, or fails to provide explanation or facilitate officials on duty under section 34 shall be liable to a fine not exceeding THB 5,000.

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 that 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 employees of the Council. The term of employment of these employees by the Thai Federation of ICT Technology Association will be deemed the term of employment by the Council from the date that this Act comes into force.

Section 44 Director of the Thai Federation of ICT Technology Association, 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 that 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 for each field, as nominated by the Thai Federation of ICT Technology Association and appointed by the Minister will constitute the first Board of Director 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 Director under section 15 within 180 days after the date this Act came into force.

To fulfil the acts prescribed in paragraph one, the Minister may extend the timeframe for 30 more days each, if necessary. Together, the extended period must not exceed 60 days.

Once Director have been elected under paragraph one, the newly-established Board of Director must summon Board of Director meeting within 30 days after the date of the election in order to fulfill the obligations in paragraph two of section 15.

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

Section 45 The Council membership term under section 16 (2) shall not apply to representatives for ordinary members who are elected as Director in accordance with the provisions on the election of the new Board of Director in section 44 paragraph one.

Section 46 Members of the Thai Federation of ICT Technology Association who has 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.

The Royal Command is 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.