

Thailand: Current state and future direction of AI regulation

In brief

Artificial Intelligence (AI) is a leading technology that is advancing rapidly. Many industries are anticipated to benefit from AI assistance, which may also affect human workforce in certain industries in the near future.

Currently, two draft legislations have been introduced in Thailand:

- (i) The Draft Royal Decree on Business Operations that Use Artificial Intelligence System ("**Draft Decree**")
- (ii) The Draft Act on the Promotion and Support of AI Innovations in Thailand ("**Draft Act**")

Business operators and stakeholders, whether a developer, service provider, importer, distributor, or deployer, should be cautious about the incorporation of AI into their businesses.

In this newsletter, we will discuss the current regulatory regime, including its obstacles, and development of AI regulations in Thailand.

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In more detail

Regulating AI using current laws may be challenging as they were not designed for the AI era. For example, when AI is developed using machine learning techniques, it can produce output without any human involvement. Thai product liability laws only hold manufacturers, importers, and distributors accountable for defective products, while under Thai tort laws, one of the stricter liability laws prescribes that the controller of a device is responsible for any harm caused by dangerous objects or machinery unless it can be proven otherwise.

Therefore, it is challenging to determine who should be held responsible for any fault created by AI under these existing laws, as different parties, including software developers, designers, and corporations, are involved in the creation of AI systems, but may not be involved in every outcome created by these systems.

Development of AI regulations

In early 2022, the Thai government began studying the regulatory approaches from several jurisdictions, and later, two different draft legislations were introduced by two different government agencies.

- (i) The Draft Decree uses a risk-based approach similar to the EU Proposal on AI Act. The obligations for providing AI systems will be stricter as the risk increases.
- (ii) The Draft Act intends to provide mechanisms and legal instruments to help the development of AI in the country, along with provisions to protect consumers from AI services.

1. The Draft Royal Decree on Business Operations that Use Artificial Intelligence Systems ("Draft Decree")

In August and October 2022, the Office of the National Digital Economy and Society Commission (ONDE) introduced the Draft Decree. It will be enacted by virtue of the Electronic Transaction Act B.E. 2544 (2001) ("ETA") under the provisions that empower the enactment of a Royal Decree, which requires business operations relating to electronic transactions to be prior notified, registered or licensed. This Draft Decree was created on a risk-based approach influenced by the European Commission's proposal on the EU AI Act. The regulatory requirements and supervision for AI systems will be stricter as the risk of such a system increases.

The AI systems under the Draft Decree are separated into three (3) categories:

AI Category	Proposed Obligations
1. Unacceptable Risk (Prohibited AI) (e.g., social scoring system or AI that exploits people's vulnerabilities)	<ul style="list-style-type: none">Prohibit all useException is allowed on a case-by-case basis
2. High Risk (e.g., credit scoring, predictive policing system, recruitment software, and autonomous vehicle)	<ul style="list-style-type: none">Prior registration with the regulatorCompliance with risk control and management measures
3. Limited Risk (e.g., chatbots and deepfakes)	Transparency Obligation

The Draft Decree only regulates AI systems within the reach of the general consumer and does not extend to those undergoing research and development.

The Draft Decree also contains *extraterritorial applicability* to service providers located outside of Thailand, which requires service registration with the regulator and the appointment of a local point of contact. It remains to be seen whether the local point of contact could be the same as the local point of contact under the Royal Decree on the Operation of Digital Platforms which are Subject to Prior Notification B.E. 2565. The current draft version of the Draft Decree also follows the concept of earlier draft versions of the EU Proposal on AI Act, which has changed under the latest version of the EU Proposal on AI Act. Therefore, business operators are recommended to monitor any further revisions of the Draft Decree in the future.

Liabilities

Several measures and liabilities have been proposed, for example, if an AI service provider fails to comply with the relevant obligations, such providers may face an administrative order, including fines. Additionally, criminal liability may be imposed if high-risk AI is not registered with the regulator before the provision of service.

2. The Draft Act on the Promotion and Support for National AI Innovations

The Draft Act was first introduced by the Electronic Transactions Development Committee of the Electronic Transactions Development Agency (ETDA) in March 2023. The Draft Act was later updated and placed for public hearing again from 18 July 2023 to 20 August 2023. Unlike the Draft Decree, the Draft Act intends to be enacted as a separate piece of legislation and would not be based on the ETA. It aims to promote and provide necessary support for the development of an AI ecosystem through legal mechanisms.

The AI promotion committee, consisting of representatives from various sector-specific regulators, is proposed to be established to supervise the implementation of the Draft Act, which will correspond with different practices across different industries and utilizes the following key mechanisms.

Key Proposed Mechanisms	Key Features
Registration	Registered businesses shall benefit from the ETDA, including eligibility to: <ul style="list-style-type: none"> • consult with the ETDA (AI Clinic). • join the AI Sandbox. • access the database to train AI.
Testing Center Sandbox	Allows an AI service provider to: <ul style="list-style-type: none"> • test an AI system in a controlled environment prior to launch. • seek the regulator's recommendations on technical and regulatory concerns. • potentially be exempt from regulations that would otherwise hinder AI development.
Data Sharing	<ul style="list-style-type: none"> • A manual, guideline, or notification for data sharing and governing data intermediary will be created. • Criteria and qualifications for being data intermediaries will be created to provide confidence to data buyers and data sellers.
Algorithm Standard	<ul style="list-style-type: none"> • Algorithm standard may be prescribed based on fair and equal principles, which are similar to the ethics guidelines. • Qualified service providers/developers can display a certification mark. • Non-compliance can lead to revocation of certification.
Standard Contractual Terms for AI service providers	Minimum provisions that each AI service provider must have in its terms and conditions include, for example: <ul style="list-style-type: none"> • obligations and responsibilities of a service provider. • warranty of service standards. • provisions relating to rights in data arisen from or related to AI.
Risk Assessment & Strict Supervision	<ul style="list-style-type: none"> • The Committee will prescribe criteria and methods for conducting risk assessments based on AI ethics principles. • The Committee may prescribe the list of AI systems that can be operated under strict supervision and the rights and obligations of the AI operator of such AI systems. • In case operators of AI systems that must be operated under strict supervision are not in Thailand, those operators will be required to notify the ETDA and appoint a local point of contact (extraterritorial applicability)
AI Compensation Fund	<ul style="list-style-type: none"> • A fund to compensate damages to users and third parties from AI usage when there is no liable party will be established.
Confidentiality of AI system data	<ul style="list-style-type: none"> • If AI system data has been provided to the competent authority when applying for certification, the competent authority shall treat such data as a trade secret according to the rules to be prescribed by the Committee.

Liabilities

There is currently no specific sanction outlined in this Draft Act, except when an AI service provider does not act according to its advertisement relating to the quality of service. In this scenario, the ETDA will be empowered to issue a corrective order.

Non-binding guidelines

There are also several non-binding AI guidelines for stakeholders, such as developers, researchers, providers, or operators. These guidelines aim to encourage stakeholders to assess the risk from using AI in their activities and provide recommendations with regard to ethics principles, e.g., Thailand Artificial Intelligence Guidelines, NSTDA AI Ethics Guideline, Thailand AI Ethics Guideline, and Digital Thailand - AI Ethics Guideline. This indicates that the regulators and government agencies in the AI ecosystem are active in developing both hard and soft laws.

Key Takeaways

Both draft laws pursue slightly different objectives. The Draft Decree introduced by ONDE seems to propose a stricter regulation that imposes obligations and liabilities on the stakeholders involved in using and providing services that use AI systems. On the other hand, the Draft Act introduced by the ETDA proposes provisions to empower the ability to set up and create an environment to expedite the development of AI, while still protecting the consumer.

The legislation process for these draft laws in Thailand is in its early stages, and the timeline for its completion is currently unclear. Hence, it will be interesting to observe the development of AI regulation that suits local needs, fosters Thailand's economy, and keeps up with the rapid changes in AI trends.

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