Over the last few months the Thai government unveiled its plans to create a “Digital Economy”. In that regard, we propose taking a closer look at how a digital economy is defined and how it should function ideally.

In layman’s terms, a digital economy refers to an economy that is based on digital technologies and the internet with the aim of creating “smarter cities”. The distinction between a “traditional” economy and a “digital” economy has in recent times been difficult to distinguish given the use of technology becoming commonplace in today’s world.

Thailand has not been the only country to propose the promotion of a digital economy; South Korea famously launched a similar initiative to create a “smart city” which brought together the world’s top technologies, building design and eco-friendly practices with the aim of creating a “smarter city”. Similarly, France in 2010 demonstrated its commitment to expand its digital economy by investing 4.5 billion in the sector as part of the “National Investment Program”. France since 2010 has been successful in attracting the world’s top digital companies such as Google and Intel to set up operations in the country to help further drive the economy.

Prime Minister Prayuth-Chan-Ocha has made the government’s intentions clear in promoting the use of internet in business and governance which has made plans for digitalizing the economy a key initiative his regime. The plans call for the creation of a national broadband network, a digital gateway and an integrated data center to facilitate public access to state services and information.

By implementing a digital economy successful the Thai government aims to equip Thailand with a highly effective telecommunications infrastructure over the course of the next two years with the aim of having each household connected with a fiber-optic telecommunication system and a competitive 4G network for mobiles. Effective implementation of the initiative would make Thailand rival Singapore as an internet and telecommunications hubs whilst competing with the island nation for the center of ASEAN.

The bills are intended to be ratified into Thai law before the end of 2015. The package includes, among others, the National Digital Committee for Economy and Society Bill, Ministry of Digital for Economy and Society Bill, Electronic Transaction Bill (amendment), Computer Crimes Bill (amendment), Cybersecurity Bill, Personal Data Protection Bill and the Broadcasting and Telecommunication Regulator Bill (amendment).

The package, which was initially drafted by the Electronic Transactions Development Agency (“ETDA”), have since its unveiling been subject to much criticism from the public and legal academics so much so that the ETDA has reconsidered their position and admitted that the package would need to be revised to address the public’s concerns. The main concerns surrounding the fact that the bills predominantly address cybersecurity rather than promote the digital economy. The cybersecurity aspects of the bill allow for an abuse of power by granting enormous leeway to...
governmental officials to access the private information of businesses and the public without their knowledge or permission.

The proposed bills contemplate the creation of the National Cybersecurity Agency ("NCSA") to be the agency in charge of enforcing the proposed laws. As currently proposed the NCSA is to consist of officials from the Defense Ministry, the Technology Crime Suppression Division and the Contemplated Digital Economy Ministry. Critics have stated that the model proposed for the NCSA represents a deviation from successful digital economy models seen overseas; generally, an independent agency is usually appointed for overseeing personal data protection laws who ensure that a balance of citizen’s rights and the government’s authority is maintained. Legal academics have since proposed that due to any absence of such an independent agency, the NCSA should also comprise of officials from the National Human Rights Commission and the Office of the Ombudsman.

Laws relating to cybersecurity are certainly not a new concept and have existed in many developed countries for sometime now. In each country a healthy debate is sparked on maintaining a divide from what is publicly accessible and what is private and confidential. In the UK and United States for example, authorities require inspecting officers to apply for a court order before requesting materials from suspected persons. Many critics of the cybersecurity have stated that similar sanctions should apply to the Thai bill and the court orders should specifically limit the period in which information may be accessed by the authorities.

A similar bill is presently being proposed in the United States with President Obama lobbying legislation which would force businesses to share more information about hacking and cyber-attacks. Instead of attempting to force the bills through, Mr. Obama has invited businesses, academics and public commentators to publically criticize the bill and set up channels to address their concerns. The Thai government should similarly allow the public to scrutinize the bills in the same way it had done for the proposed amendments to the Foreign Business Act at the end of 2014 and its investment promotion strategy which had called for a meeting of the international business community and local businesses to allow them each to raise their concerns.

Taking a step back to look at the bigger picture without bearing in mind the scrutiny attracted by the bills, the 10 proposed bills represent a good start in the creation of a digital economy, a concept which prior to the 22 May coup d’etat had not been proposed by any government. The package represents a big step forward in “upgrading” Thailand and is an initiative which would be strongly supported by the private sector provided that Thailand can follow a model which keeps in the mind the rule of law and balances the use of power by authorities whilst still respecting the private rights of citizens.

Kunal Sachdev
kunal@dfdl.com