

ELECTRONIC TRANSACTIONS ACT (No. 3),
B.E. 2562 (2019)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;

Given on the 12th 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 amend the law on electronic transactions;

Whereas this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 26 in conjunction with section 32, section 33, section 34, section 37 and section 40 of the Constitution of the Kingdom of Thailand so permits by virtue of provisions of law;

Whereas the reasons and need for the restriction of rights and liberties of persons under this Act lie in ensuring that the conclusion of electronic transactions conforms to international standards and facilitating efficient State regulation of service businesses relating to electronic transactions, thereby protecting consumers and public interests, and, in this regard, the enactment of this Act duly complies with the conditions provided in 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 serving as the National Assembly, as follows.

* Translation by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand. – Tentative Version – subject to final authorisation by the Office of the Council of State.

Section 1. This Act is called the “Electronic Transactions Act (No. 3), B.E. 2562 (2019)”.

Section 2.¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. There shall be added a definition of “automated electronic message system” between the definitions of “information system” and “electronic data interchange” in section 4 of the Electronic Transactions Act, B.E. 2544 (2001):

““automated electronic message system” means a computer program or an electronic means or other automated means used to initiate an action or respond to data messages or any performances against data messages in whole or in part, without review or intervention by a natural person each time an action is initiated or each time a response is generated by the system”.

Section 4. The provisions of the definition of “State agency” in section 4 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the flowing:

““State agency” means:

(1) a Ministry, a Sub-Ministry, a Department, a Government agency called by any other name and ascribed the status as a Department, a provincial administration and a local administration;

(2) a State enterprise established by an Act or a Royal Decree;

(3) a public organisation established by an Act or a Royal Decree;

(4) an agency of the National Assembly;

(5) an agency of the Court in matters not relating to trial and adjudication of cases;

(6) an organ under the Constitution in matters not relating to adjudication of disputes;

(7) an independent organ established by the law;

(8) a juristic person, a group of persons or a person, having duties and powers to carry out affairs of the State in any matter whatsoever”.

¹ Published in Government Gazette, Vol. 136, Part 49a, dated 14th April 2019.

Section 5. There shall be added definitions of “Director” and “Agency” between the definitions of “Commission” and “Minister” in section 4 of the Electronic Transactions Act, B.E. 2544 (2001):

““Director” means the Director of the Electronic Transactions Development Agency;

“Agency” means the Electronic Transactions Development Agency under the law on the Electronic Transactions Development Agency”.

Section 6. The provisions of paragraph one of section 8 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“**Section 8.** Subject to the provisions of section 9, in the case where the law requires that any transaction be made in writing, evidenced by writing or supported by a document, or provides legal consequences for the absence of a writing, written evidence or a supporting document, if the information is generated in the form of a data message which is accessible and usable for subsequent reference without its meaning being altered, it shall be deemed that such information is made in writing, evidenced by writing or supported by the document as required by law.”

Section 7. The provisions of section 9 of the Electronic Transactions Act, B.E. 2544 (2001) as amended by the Electronic Transactions Act (No. 2), B.E. 2551 (2008) shall be repealed and replaced by the following:

“**Section 9.** In the case where the law requires a signature or provides legal consequences for the absence of a signature, it shall be deemed that a signature has been entered if:

(1) a method is used which is capable of identifying the signatory and indicating the signatory’s intention in respect of the information contained in the data message; and

(2) the method used is of either of the following descriptions:

(a) the method which is as reliable as appropriate for the purpose for which the data message was generated or sent, having regard to surrounding circumstances, including any relevant agreement; or

(b) any other method which is capable of identifying the signatory and indicating the signatory’s intention under (1), by itself or together with further evidence.

In determining a reliable method under paragraph one (2) (a), regard shall be had to:

(1) the security and strictness of the use of methods or equipment in the identification of persons, the availability of alternative methods of identification of persons, signature requirements set forth in the law, the security level of the use of the electronic signature, the compliance with authentication procedures set forth by intermediaries, the degree of acceptance or non-acceptance of the method of identification of persons in making transactions and the method of identification of persons at the time of making the transaction and the communication;

(2) the nature, kind and size of the transaction made, the number of occasions on which or the frequency at which transactions take place, trade customs or practice and the importance and the value of the transaction made; or

(3) the strictness of communication systems.

The provisions of paragraph one shall also apply *mutatis mutandis* to the affixing of seals of juristic persons by an electronic means.”

Section 8. The following provisions shall be added as section 13/1 and section 13/2 of the Electronic Transactions Act, B.E. 2544 (2001):

“**Section 13/1.** A proposal to conclude a contract made through one or more electronic communications which is not addressed to any specific person, but is accessible to persons in general making use of information systems, including proposals that make use of interactive applications for the placement of orders through information systems, is to be considered as an invitation to make offers, unless the proposal to conclude a contract clearly indicates the intention of the person making the proposal to be bound in case of acceptance.

Section 13/2. A contract formed by the interaction of an automated electronic message system and a natural person, or of automated electronic message systems, shall not be denied validity or enforceability on the sole ground that no natural person intervened in each of the individual actions carried out by the automated electronic message systems or the resulting contract.”

Section 9. The provisions of (1) of paragraph one of section 16 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“(1) the addressee has properly ascertained, in accordance with the procedure agreed to or bound by the originator, whether the data message was that of the originator; or”

Section 10. The following provisions shall be added as section 17/1 of the Electronic Transactions Act, B.E. 2544 (2001):

“**Section 17/1.** In the case where an input error is made by a natural person and sent through an automated electronic message system of another party and such automated electronic message system does not provide the person with a channel for correcting the resulting error, such person or the representing party has the right to withdraw the portion of the declaration of an intention in which the input error occurred if:

(1) such person or the representing party forthwith notifies the other party of the error after having learned of such error and satisfies that the error has been made through the automated electronic message system; and

(2) such person or the representing party has not materially used or received any benefit from the goods or services or any other thing from the other party.”

Section 11. The provisions of (4) of paragraph one of section 26 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“(4) in the case where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information, any alteration made to that information as from the time of signing is detectable.”

Section 12. The provisions of section 32 and section 33 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“**Section 32.** A person has the right to carry out a service business relating to electronic transactions, but in the case where it is necessary for maintaining financial and commercial security or for strengthening the reliability and credibility of data message systems or for preventing loss to the public, there shall be enacted a Royal Decree requiring that the operation of any particular service business relating to electronic transactions be subject to prior notification, registration or licence, as the case may be.

In making the determination as to in which case a notification, registration or licence under paragraph one shall be required, regard shall be had to impacts likely to occur in consequence of the operation of the business in question in conjunction with the appropriateness of the supervision and prevention of loss in accordance with the magnitude of severity of impacts likely to occur in consequence of the operation of such business.

For this purpose, any particular State agency may be designated, in the Royal Decree enacted under paragraph one, as a responsible supervisory agency. If no particular State

agency is designated as a responsible supervisory agency, the Office shall be the responsible supervisory agency in relation to the operation of service businesses relating to electronic transactions under such Royal Decree. In this regard, the State agency which is a responsible supervisory agency under the Royal Decree or the Office, as the case may be, shall also appoint competent officials for performing activities in the execution of the Royal Decree.

Prior to the recommendation of the issuance of the Royal Decree under paragraph one, a public hearing shall be conducted as is appropriate and the information to be derived therefrom shall be consulted for assisting consideration.

Section 33. In the case where a Royal Decree requires that the operation of any particular service business relating to electronic transactions be subject to prior notification, a person intending to operate such business shall make the notification to the competent official prior to the commencement of the operation of such business, in accordance with the rules, procedures and conditions prescribed in the Royal Decree.

Upon receipt of the notification, the competent official shall, on the date of receipt of such notification, issue a certificate of notification as evidence of the notification and the notifier may operate that business as from the date of receipt of such certificate of notification. But, if the competent official subsequently finds that the notification has been made in an incorrect or incomplete manner, the competent official shall have the power to order the notifier to make rectification for ensuring correctness or completeness and produce the rectification results to the competent official within a period of time specified.

In the case where the business operator fails to make rectification or fails to comply with the order of the competent official within the period of time specified, the competent official shall order such person to discontinue services in respect of electronic transactions in the operation of such business as from the date of the expiration of the period of time under paragraph two until correct and complete rectification has been made in accordance with the order of the competent official.

In the operation of business, the notifier shall comply with the rules prescribed in the Royal Decree and the Notification prescribed by the Commission. The rules under such Royal Decree shall also provide for compensation or remedies for persons suffering loss from the operation of business.

If the notifier fails to comply with the rules for the operation of business under paragraph four, the competent official shall issue an order prohibiting such person from providing

services in respect of electronic transactions in the operation of such business until correct and complete action has been taken in accordance with such prescribed rules.

In the case where the notifier fails to make rectification under paragraph three or fails to comply with paragraph five within ninety days as from the date of the discontinuance of or prohibition from the operation of the business, the competent shall withdraw receipt of the notification of such person from the notification entry and notify it in writing to such person expeditiously.”

Section 13. The following provisions shall be added as section 33/1 of the Electronic Transactions Act, B.E. 2544 (2001):

“**Section 33/1.** In the case where a Royal Decree requires that the operation of any particular service business relating to electronic transactions be subject to prior registration, a person intending to operate such business shall apply for registration with the competent official prior to the commencement of the operation of such business, in accordance with the rules, procedures and conditions prescribed in the Royal Decree.

Upon receipt of an application for registration, the competent official shall, on the date of submission of such application, issue a certificate of application for registration as evidence thereof and if the competent official, having examined supporting documents and evidence, considers that they completely and correctly satisfy the requirements in the Royal Decree, the competent official shall permit registration and notify it in writing to the applicant for registration within thirty days as from the date of receipt of such application for registration and the registrant may operate that business as from the date of permission for registration.

If the competent official is unable to complete the examination within the period of time under paragraph two, the applicant for registration may operate the business for the time being as from the day following the date of the expiration of such period of time.

In the case where the competent official finds, prior to permission for registration under paragraph two or subsequent to such person’s operation of the business, that supporting documents and evidence of the applicant for registration are incomplete or incorrect, the competent official shall notify it in writing to the applicant for registration or the registrant, as the case may be, for making rectification to ensure correctness and completeness within a period of time specified. In this regard, if the applicant for registration or the registrant, without any reasonable cause, fails to make rectification to ensure correctness and completeness or fails to take action until the period of time specified by the competent official expires, the right to operate the business of the applicant for registration under paragraph three shall terminate, with the result

that the application for registration shall be deemed to have lapsed, or an order shall be issued for revocation of the registration of such business operator, as the case may be.

In the operation of business, the registrant shall comply with the rules prescribed in the Royal Decree and the Notification prescribed by the Commission. The rules under such Royal Decree shall also provide for compensation or remedies for persons suffering loss from the operation of business.

If the registrant violates or fails to comply with the rules for the operation of business under paragraph five, the Commission shall consider issuing an order imposing on such person a fine not exceeding one million Baht, having regard to the gravity of the faulty conduct, provided that the rules for the consideration and imposition of a fine shall be as prescribed by the Commission, and in the case where it thinks fit, the Commission may issue an order requiring such person to take any action for the purpose of proper and appropriate rectification.

If the person upon whom the fine is imposed fails to make its payment, the Commission shall have the power to institute an action before the Court having jurisdiction to try criminal cases for mandating payment of the fine. In this regard, in the case where the Court renders judgment requiring payment of the fine, if such person fails to make payment thereof within thirty days as from the date of the judgment of the Court, such person's property shall be seized for the purpose of payment of the fine, provided that measures for detention in lieu of a fine shall not apply to such person.

In the case where the person committing the wrongful conduct under paragraph six fails to make rectification in accordance with the order of the Commission or repeats violation of, or failure to comply with, the rules for the operation of business under paragraph five within a period of one year as from the date of the Commission's first order of a fine, the Commission may issue an order revoking the registrant's registration. The competent official shall expeditiously notify such order to such person."

Section 14. The provisions of section 34 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

"Section 34. In the case where a Royal Decree requires that the operation of any particular service business relating to electronic transactions be subject to a prior licence, a person intending to operate such business shall submit an application for a licence to the competent official as prescribed in the Royal Decree.

Qualifications of the applicant for a licence, rules and procedures for the application, the issuance of a licence, the renewal of a term of validity of a licence, the surrender

of a licence and the suspension or revocation of a licence shall be in accordance with the rules, procedures and conditions prescribed in the Royal Decree.

In the operation of business, the licensee shall comply with the rules prescribed in the Royal Decree, the Notification prescribed by the Commission or the conditions in the licence. The rules under such Royal Decree shall also provide for compensation or remedies for persons suffering loss from the operation of business.

In the case where the licensee violates or fails to comply with the rules for the operation of business under paragraph three, the Commission shall consider issuing an order imposing on such person a fine not exceeding two million Baht and the provisions of section 33/1 paragraph six and paragraph seven shall apply *mutatis mutandis*.

In the case where the person committing the wrongful conduct under paragraph four fails to make rectification in accordance with the order of the Commission or repeats violation of, or failure to comply with, the rules for the operation of business under paragraph three within a period of one year as from the date of the Commission's first order of a fine, the Commission may issue an order revoking the licensee's licence. The competent official shall expeditiously notify such order to such person."

Section 15. The following provisions shall be added as section 34/1 and section 34/2 of Chapter III, Service Businesses Relating to Electronic Transactions, of the Electronic Transactions Act, B.E. 2544 (2001):

"Section 34/1. For the purpose of supervision of the operation of service businesses relating to electronic transactions under this Chapter, the Commission, the Agency or the State agency which is the responsible supervisory agency under section 32 paragraph three shall, by Notification, prescribe additional details for matters specified in the Royal Decree under section 32 insofar as they are not contrary to or inconsistent with such Royal Decree.

Section 34/2. For the purpose of supervision and regulation of the operation of service businesses relating to electronic transactions in the execution of this Act or the Royal Decree under section 32, competent officials of State agencies or the Agency having the duty to supervise the operation of service businesses relating to electronic transactions shall have duties and powers as follows:

(1) to instruct, in writing, service providers or personnel of service providers or any person to give information or furnish any document or evidence pertinent to the operation of the service businesses in question;

(2) to examine and gather facts for reporting them to the Commission in the case where a service provider commits an offence or causes damage on account of violation of or failure to comply with this Act or a Royal Decree, a Notification of the Commission or conditions in a licence;

(3) to enter a service provider's place during sunrise and sunset or during working hours of such place for examining and gathering facts and seizing or attaching documents as well as evidence and any other thing pertinent to the provision of services, as suspected to be possessed for use or to have been used in the commission of offences.

In the performance of duties of the competent official under this section, the official's identification card issued by the State agency or the Office tasked with the supervisory duty shall be produced and persons concerned shall render reasonable assistance."

Section 16. The following provisions shall be added as paragraph three of section 35 of the Electronic Transactions Act, B.E. 2544 (2001):

"Upon enactment of the Royal Decree under paragraph one, the Court or an organ under the Constitution may elect to apply rules on any particular matter provided under such Royal Decree to the conduct of affairs insofar as they are concerned with the trial and adjudication of cases of the Court or the decision on disputes, as the case may be, to ensure that they proceed in a manner appropriate to its duties and powers under the law and may also prescribe additional rules, provided that this shall be published in the Government Gazette."

Section 17. The provisions of section 36 of the Electronic Transactions Act, B.E. 2544 (2001) as amended by the Electronic Transactions Act (No. 2), B.E. 2551 (2008) shall be repealed and replaced by the following:

Section 36. There shall be the Electronic Transactions Commission consisting of Chairperson appointed by the Council of Ministers from qualified persons, Permanent Secretary for Digital Economy and Society, as Vice Chairperson, and eight other qualified members appointed by the Council of Ministers.

The Director shall be a member and secretary and shall appoint officials of the Agency as assistant secretaries as is necessary, provided that not more than two persons may be appointed.

The Chairperson and qualified members under paragraph one shall be persons possessing apparent knowledge, expertise and ability in the areas of finance, electronic commerce, law, computing science, science or engineering, social science or any other area

beneficial to the operation of work of the Commission, provided that not less than one half of the total number of the qualified members shall be persons who are neither Government officials nor personnel in a State agency holding positions or having permanent salaries.

Rules and procedure for the acquisition of Chairperson and qualified members shall be in accordance with the Rules prescribed by the Minister.”

Section 18. The provisions of section 37, section 38, section 39 and section 40 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“**Section 37.** The Electronic Transactions Commission shall have the duties and powers as follows:

(1) to consider and approve the strategic plan on electronic transactions proposed by the Agency under section 43 paragraph two;

(2) to promote and support State agencies, private agencies and members of the public in the pursuit of activities in accordance with the strategic plan under (1);

(3) to prescribe digital technology standards in respect of electronic transactions;

(4) to supervise and monitor the implementation of the strategic plan under (1) for the purpose of gathering information and problems concerning the conclusion of electronic transactions affecting digital technology operation and development, for submission to the National Commission on Digitality for Economy and Society;

(5) to make recommendations, to the National Commission on Digitality for Economy and Society and the Council of Ministers, on the making or revision of laws relating to electronic transactions development and the protection of intellectual property involving the conclusion of electronic transactions;

(6) to make recommendations or give advice to the Minister on the enactment of Royal Decrees under this Act;

(7) to issue Rules or Notifications in the execution of this Act or in the interest of promoting and supporting the conclusion of electronic transactions;

(8) to supervise the operation of service businesses relating to electronic transactions under this Act;

(9) to perform any other activities in the execution of this Act or other laws.

In the performance in the execution of the duties and powers under paragraph one, the Commission may, in writing, require any State agency or person to give explanations,

provide facts, give statements or furnish relevant documents or evidence for assisting its operation of work.

In the performance of activities under this Act, members of the Commission shall be officials under the Penal Code.

Section 38. The Chairperson and qualified members shall hold office for a term of four years.

At the expiration of the term under paragraph one, if the new Chairperson and qualified members have not yet been appointed, the Chairperson and qualified members vacating office at the expiration of such term shall remain in office for continuing the performance of duties until newly appointed Chairperson and qualified members take office, provided that this shall not exceed ninety days as from the date of the vacation of office of the Chairperson and qualified members at the expiration of such term.

Section 39. In addition to the vacation of office upon the expiration of the term under section 38, the Chairperson and a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being removed by the Council of Ministers on the ground of misbehaviour, neglect of or dishonesty in the performance of duties or lack of competence;
- (4) being an incompetent person or a *quasi*-incompetent person;
- (3) being imprisoned by a final judgment to imprisonment, except for an offence committed through negligence or a petty offence.

Section 40. In the case where the Chairperson or a qualified member vacates office before the expiration of the term, the Commission shall consist of the remaining members and the appointment of the Chairperson or a qualified member to fill the vacancy shall be made within sixty days as from the date of the vacancy unless less than ninety days remain in the term of office of members, and the replacing person so appointed shall be in office for the remaining term of the replaced person.”

Section 19. The following provisions shall be added as paragraph four of section 41 of the Electronic Transactions Act, B.E. 2544 (2001):

“A meeting of the Commission may be held by an electronic means as prescribed by the Commission.”

Section 20. The provisions of section 43 of the Electronic Transactions Act, B.E. 2544 (2001) as amended by the Electronic Transactions Act (No. 2), B.E. 2551 (2008) shall be repealed and replaced by the following:

“**Section 43.** The Agency shall serve as the clerical body for the Commission.

The Agency shall prepare a strategic plan on electronic transactions to be submitted to the Commission for approval under section 37 (1) and to be furnished to agencies concerned for further proceeding.”

Section 21. The following provisions shall be added as section 43/1 of Chapter V, Electronic Transactions Commission, of the Electronic Transactions Act, B.E. 2544 (2001):

“**Section 43/1.** The strategic plan required to be prepared by the Agency under section 43 paragraph two shall be in line with the national policy and plan on the development of digitality for economy and society under the law on development of digitality for economy and society and, in this regard, shall at least provide for the following matters:

(1) mechanisms and measures for the development of digital technology infrastructure for accommodating the conclusion of electronic transactions, electronic commerce, service businesses relating to electronic transactions and electronic transactions in the public sector;

(2) measures for promoting and supporting the availability of service systems for the conclusion of electronic transactions, electronic commerce and the provision of electronic transaction services, through the application of digital technology, in support of national development in diverse areas;

(3) processes for promoting the development of standards and rules on the application of digital technology, with a view to achieving secure interoperability, availability and trustworthiness of the provision of services;

(4) directions and measures for promoting the production and development of personnel in the areas of electronic transactions, electronic commerce, service businesses relating to electronic transactions and electronic transactions in the public sector, and also the application of relevant digital technology;

(5) directions for the promotion and support of education, studies and research on digital technology in the areas of electronic transactions, electronic commerce and the provision of electronic transaction services, and also the promotion of public dissemination of knowledge with a view to the exploitation of such technology.”

Section 22. The provisions of section 44 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“**Section 44.** Any person who operates the service business relating to electronic transactions without making the notification to the competent official as prescribed in the Royal Decree under section 33 paragraph one or in violation of the competent official’s order requiring discontinuance of the provision of services or the order prohibiting the provision of services in respect of electronic transactions in the operation of business under section 33 paragraph three or under section 33 paragraph five, as the case may be, or operates the service business relating to electronic transactions after the competent official has withdrawn receipt of the notification under section 33 paragraph six shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred thousand Baht or to both.”

Section 23. The following provisions shall be added as section 44/1 of the Electronic Transactions Act, B.E. 2544 (2001):

“**Section 44/1.** Any person who operates the service business relating to electronic transactions without registration with the competent official as prescribed in the Royal Decree under section 33/1 paragraph one or operates the service business relating to electronic transactions after an order has been issued for revocation of the registration under section 33/1 paragraph four or paragraph eight, as the case may be, shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand Baht or to both.”

Section 24. The provisions of section 45 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

“**Section 45.** Any person who operates the service business relating to electronic transactions without being granted a licence under section 34 or operates the service business relating to electronic transactions during the currency of an order suspending the licence or after an order has been issued by the Commission for revocation of the licence shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three hundred thousand Baht or to both.”

Section 25. The Electronic Transactions Commission holding office on the day prior to the date on which this Act comes into force shall remain in office until the Electronic Transactions Commission is appointed under the Electronic Transactions Act, B.E. 2544 (2001) as amended by this Act.

Section 26. Any act carried out by the Electronic Transactions Commission under the Electronic Transactions Act, B.E. 2544 (2001) prior to the date on which this Act comes into force, which remains effective, shall continue to be in effect, and in the case where the pursuit of such act has been unaccomplished when the Electronic Transactions Commission has been appointed under the Electronic Transactions Act, B.E. 2544 (2001) as amended by this Act, further proceeding shall be as determined by such Electronic Transactions Commission.

Section 27. The Prime Minister and the Minister of Digital Economy and Society shall have charge and control of the execution of this Act.

Countersigned by:

General Prayut Chan-o-cha
Prime Minister

Office of the Council of State