

Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



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Thailand's Legal System Undergoes Major Digital Reforms

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Thailand has a strong reputation for modernizing digital business regulations in line with international standards, in order to make the jurisdiction an attractive location for international businesses, and its push to do so sometimes has extremely wide-reaching effects on the legal system as a whole. A recent example is Thailand's Electronic Transaction Act B.E. 2544 (2001) (ETA), which came into effect on April 15, 2019, aiming to mitigate or eliminate obstacles to electronic transactions and harmonize Thailand's electronic transaction law with the United Nations Convention on the Use of Electronic Communications in International Contracts. In doing so, it has had enormous practical impacts on Thai contract law and court procedure.

Firstly, the ETA now states that any action that is legally required to be in writing can be executed in the form of information generated, sent, received, stored, or processed by electronic means, such as electronic data interchange, electronic mail, telegram, telex, or fax, assuming such information is accessible and usable for subsequent reference without its meaning being altered. This means that any legal requirement for something to be “in writing” can now be read as including electronic means.

Secondly, and similarly, the changes introduce a new concept—the “automated electronic system for data exchange” (AESDE)—which is defined as a computer program, electronic method, or other automated method that is used to initiate an act, a response to electronic data, or any operation performed by the data system, either in part or in whole, without examination or intervention by a natural person. The ETA prohibits any person from denying the validity or enforceability of a contract entered into through an AESDE solely on the grounds that there was no natural person involved in each operation of the AESDE.

Preempting potential mistakes in AESDEs, the law also provides a section on human error. Where a person makes an input error that is then sent via another party's AESDE, and that system does not provide a channel to correct the error, the person who made the input error, or an authorized representative, may revoke their intention (derived from the input error in question) if:

1. the person who made the error (or his or her representative) notifies the other party of the error as soon as it becomes known and indicates that such error was made via the AESDE; and
2. the person who made the error (or his or her representative) does not get any material benefit or value from the goods or services, if any, received from the other party.

Finally, courts or organizations under the Constitution of Thailand may now apply rules and procedures for electronic transactions in the public sector, as prescribed by royal decree, to court proceedings and other dispute resolution mechanisms.

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Electronic Transaction Act (from page 1)

In addition to these broad principles, the amendments bring practical changes to a number of more specific areas, including E-signatures, digital invitations to offer, and the governance structure for electronic transactions. These are summarized below.

Electronic Signature

The ETA revises the criteria for E-signatures, deeming them legally valid and enforceable if:

1. the method used for the E-signature is capable of identifying the signatory and representing the signatory's intentions regarding the information contained in the electronic data; and
2. the method used is reliable and appropriate (in light of the surrounding circumstances or related agreements) for the purpose for which the data message was generated or sent; or the method is capable of verifying the signatory and representing the signatory's intentions regarding the information contained in the electronic data—along with other evidence if the method itself does not sufficiently show this.

Invitation to Make an Offer

An electronic invitation to make an offer will be deemed valid if:

1. it is made via electronic communication and sent to non-specific persons; and
2. it is accessible for any other persons using the same data system.

This also includes an offer made through a data system that allows automatic responses. However, this does not cover a proposal that clearly indicates that the party making it intends to be bound by it in case of acceptance—for example, clickwrap (or clickthrough) agreements commonly used by software providers.

Governance of E-service Businesses

The Electronic Transactions Development Agency (ETDA) is in charge of service businesses relating to electronic transactions (E-service businesses), unless otherwise stipulated in law. In determining which E-service businesses are subject to notification, registration, and licensing requirements, the ETDA will consider the potential impact of the E-service business and the appropriateness of monitoring and undertaking damage prevention measures in accordance with the degree of severity of the impact. The provision in question here states that a royal decree is to be enacted to clarify these points further, but the decree has not yet been announced.

Rules, procedures, and conditions for E-service businesses imposed by the ETDA will be prescribed by royal decree, and penalties for non-compliance with E-service business royal decrees are as follows:

1. suspension of the business, or removal of its notification from the list, as the case may be, for failure to comply with a notification requirement;
2. a fine of up to THB 1 million for failure to comply with a registration requirement; and

3. a fine of up to THB 2 million for failure to comply with a licensing requirement.

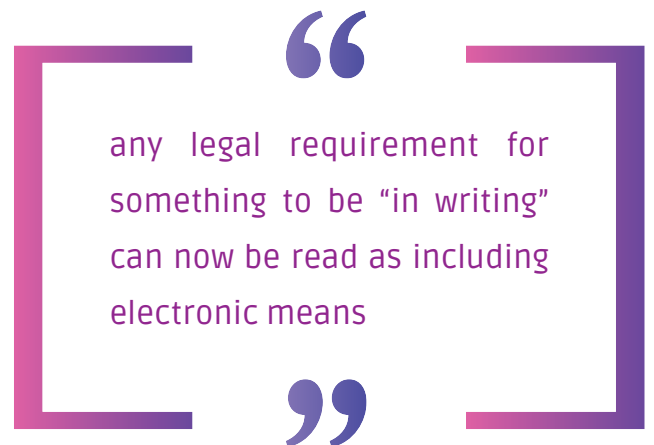
If a party is fined under points 1, 2, or 3 above, and re-offends within a year, their registration or license may be revoked.

Criminal penalties for operating an E-service business without registration or license have been added in the ETA and include not only fines but also potential imprisonment. Failure to register is punishable by a term of imprisonment of up to two years, a fine of up to THB 200,000, or both, while failure to obtain a license is punishable by a term of imprisonment of up to three years, a fine of up to THB 300,000, or both.

Other Provisions

The ETA grants a number of duties and powers to the Electronic Transactions Commission (an agency of the Ministry of Digital Economy and Society), including, among others, the power to:

1. approve strategic plans regarding electronic transactions;
2. promote and support any activities in accordance with the strategic plans;
3. determine technology standards in respect of electronic transactions;
4. supervise E-service businesses; and
5. request information or documents from any person in relation to operation of E-service businesses.



The ETA authorizes officials to enter into the premises of a business operator between sunrise and sunset, or during that business operating hours, to inspect and gather information and to seize and confiscate documents, evidence, or any other things that might be associated with offenses under the ETA or its subordinate legislation.

The above changes to the ETA are expected to be welcomed by businesses, as the revisions update Thai law on electronic transactions to be in line with current widely accepted standards as expressed in the UN Convention on the Use of Electronic Communications in International Contracts. This should add flexibility for carrying out business transactions via electronic means and simplify the process of harmonizing practices regionally and globally. That said, with major benefits come potential risks, and it is crucial for E-service businesses to ensure that their operations are fully compliant with Thai laws and regulations before implementation. 🇹🇭