

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 the Electronic Transactions;

Whereas this Act contains certain provisions restricting the 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 permit by virtue of provisions of law;

Whereas the rationale and necessity for the restriction of rights and liberties of persons is to ensure that electronic transactions conform with international standards and in order for the State to supervise the operation of businesses providing electronic transaction services effectively to ensure the protection of consumers and the public interest, and, in this regard, the enactment of this Act duly complies with the conditions prescribed 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.

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

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

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““automated message system” means a computer program or other electronic means, or other automated means which is used to initiate an action or respond to a data message or any act made to a data system, in whole or in part, without review or interference by a human being in each action, or each time the system creates a response.”

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of the definition of “State agency” in section 4 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the following:

““State agency” means:

(1) Ministry, a sub-ministry, a Department, a Government agency of any other name having the status of 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 within the National Assembly;

(5) an agency within the Courts, only for those which do not adjudicate cases;

(6) an organ established by virtue of the Constitution, only for those which do not adjudicate disputes;

(7) an independent organisation established by law;

(8) a juristic person, a group of persons or a person having duties and powers to perform any work of the State in any matter.”

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

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

“Agency” means 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. Under the provisions of section 9, in the case where any act is required by law to be made in writing, evidenced in writing or where it is required that a document is to be shown as proof, or where a law provides a consequence for not making a written document, or not having written evidence, or for the lack of a document to be shown as proof, if information is documented in the form of electronic data messages which is

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accessible and reusable without alternation of the meaning thereof, it shall be deemed that such information has been made in writing, is evidenced in writing, or constitutes the documents required to be shown as proof 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 a consequence in the case where no signature is made, it shall be deemed that a signature has been made where:

(1) a method is used to identify that person and to indicate that person’s approval of the information contained in the data message; and:

(2) one of the following methods has been used:

(a) a reliable method that is appropriate for the purpose of generating or communicating the data message, in light of all circumstances, to include any relevant agreements, or;

(b) any other method which can identify the owner of the signature and can indicate the intention of the owner of the signature under (1) by itself, or by considering with any other evidence.

In relation to the reliable method under paragraph one (2) (a), consideration shall be made of:

(1) the security and conciseness of the method or equipment used to identify a person, the readiness of alternatives for identification, rules relating to signature prescribed by law, the level of security and safety in the use of an electronic signature, the conformity of the procedures in the identification of the medium, the level of acceptability and unacceptability, the methods for identification of persons in conducting transactions, the method of identification at the time the transaction and communication is made;

(2) the nature, type, and size of the transaction, the number of times or the frequency of conducting transactions, trade customs or practice, the importance and value of the transaction, or:

(3) the conciseness of communication systems.

The provisions of paragraph one shall 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):

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“Section 13/1. An offer to conclude a contract via electronic communication transmitted once or multiple times which is not addressed to a particular person but is accessible by any person using the information system, including an offer made for the placement of orders through an automated-response information system, for the placement of orders through such information systems shall be deemed as an invitation for an offer, except an offer to conclude a contract which clearly specifies the intention of the offeror to legally bind upon acceptance.

Section 13/2. The validity and enforceability of a contract concluded between an automated message system and a natural person, or by the interaction of automated message systems, or by the interaction of automated message systems, shall not be denied on the grounds that no natural person is involved in each of the individual act made by the automated electronic messaging system 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 recipient of information has appropriately ascertained whether the data message is from the sender in accordance with the procedures agreed to, or bound by the sender, 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 a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(1) The person or the party on whose behalf that person was acting, notifies the other party of the error immediately after having knowledge of such error, and indicates that he or she made an error in the electronic communication; and :

(2) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.”

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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 it is prescribed by law that a signature is to certify the completeness and integrity of the information, any alteration made to such information as from the time the electronic signature is made can be 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 operate a business which provides services relating to electronic transactions, however, in the case where it is necessary to maintain financial and commercial security, or for the benefit of strengthening trustworthiness and reliability of electronic information systems, or to prevent the occurrence of loss to the public, a Royal Decree shall be enacted to prescribe that the operation of a business providing services relating to electronic transactions be subject to notification, registration, or licencing prior to operation, as the case may be.

In prescribing the cases where a prior notification, registration or a licence is required under paragraph one, consideration shall be made of the impact which may arise from the operation of such business, together with the suitability of supervision and the protection against loss according to the severity of the impact which may arise of the operation of such business.

In this matter, the Royal Decree under paragraph one may designate any one State agency to be responsible for the supervision. If no State agency is designated to be responsible for the supervision, the Agency shall be responsible for supervision of the operation of businesses providing services relating to electronic transactions under such Royal Decree. In any case, the State agency who is responsible for the supervision under the Royal Decree, or the Agency, shall appoint competent officials to carry out the task according to the Royal Decree.

Prior to the proposal for the enactment of a Royal Decree under paragraph one, a public hearing must be made as is suitable, and the information gathered shall be taken into consideration.

Section 33. In the case where a Royal Decree prescribes that an operation of a business which provides services relating to electronic transactions be subject to notification prior to operation, a person intending to operate such a business shall notify the competent official prior to commencing the operation of such business in accordance with the criteria, method and conditions prescribed in the Royal Decree.

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Once the competent official has received the notification, they shall issue a certificate of notification as evidence of the notification on the day of its receipt, and such business operator who has submitted the notification may operate such business as from the date of receipt of such certificate of notification. However, if the competent official later finds the notification incorrect or incomplete, they shall have the power to order the notifier to rectify such notification so that is correct or complete, and to show such rectification to the competent official within a prescribed time period.

In the case where a business operator fails to rectify or fails to comply with the order of the competent official within the time period prescribed, the competent official shall order such business operator to suspend the provision of services relating to electronic transactions as from the day the time period under paragraph two lapses until rectification has been made and the notification is correct and complete in accordance with the order of the competent official.

In the operation of the business, the notifier must comply with the criteria prescribed in the Royal Decree and the Notification prescribed by the Commission. The criteria under the Royal Decree shall prescribe compensation or remedies for persons sustaining losses from the operation of the business.

If the notifier fails to comply with the criteria for operating a business under paragraph four, a competent official shall order such business operator to suspend the provision of services relating to electronic transactions until compliance is correct and complete according to such criteria.

In the case where the notifier fails to make rectifications under paragraph three or fails to comply with paragraph five within ninety days as from the date of suspension of service provision or of having been prohibited, the competent official shall revoke the notification of such notifier from the notification system and notify such person in writing without delay.”

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 the Royal Decree prescribes that an operation of any business which provides services relating to electronic transactions be subject to registration prior to operation, a person intending to operate such business must submit an application to a competent official prior to commencing the operation of such business in accordance with the criteria, method and conditions prescribed in the Royal Decree.

Once the competent official has received an application for registration, they shall issue a certificate of application for registration as evidence of the application on the day

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of its receipt, and if the competent official has examined the documents and evidence for registration and is of the opinion that they are complete and correct according to the Royal Decree, they shall permit registration and notify the applicant in writing within thirty days as from the day of receipt of such application for registration, and the registrant may operate such business as from the day it was registered.

If the competent official is unable to complete the examination within the time period prescribed under paragraph two, the applicant may operate the business for the time being as from the day the time period lapses.

In the case where the competent official examines the application for registration under paragraph two prior to registration, or after the applicant has commenced the operation of such business, and finds that the registration of the applicant is incomplete or incorrect, the competent official shall notify the applicant or the registrant in writing, as the case may be, to rectify for correctness and completeness within a prescribed time period. In this matter, if the applicant or registrant fails to rectify to correct or complete the application, or fails to comply after the time period prescribed by the competent official lapses without reasonable cause, the right to operate a business of the applicant under paragraph three shall be extinguished and the application for registration shall be deemed to have lapsed, or an order shall be issued for the revocation of the registration of such business operator, as the case may be.

In the operation of the business, the registrant must comply with the criteria prescribed by the Royal Decree and in accordance with the Notification prescribed by the Commission. The criteria under the Royal Decree shall prescribe compensation or remedies for persons sustaining losses from the operation of the business.

If the registrant violates or fails to comply with the criteria for operating a business under paragraph five, the Commission shall consider imposing an order to fine such person not more than one million baht, taking into consideration the gravity of the conduct of violation. The criteria for the consideration of the fine shall be as prescribed by the Commission, and where it is deemed appropriate, the Commission may order such person to take any measure to rectify such conduct so that it is correct or suitable.

If the person subject to the fine under paragraph six fails to make payment, the Commission shall have the power to bring a court proceeding to the Court with jurisdiction to try criminal cases for mandating payment of the fine. Where the Court adjudicates for the payment of the fine, if such person fails to make payment within thirty days as from the date the Court issues the judgment, such person's property shall be seized for the payment of the fine, but measures for detention in lieu of a fine shall not apply to such person.

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In the case where the offender under paragraph six fails again to comply with the order of the Commission, or re-violates, or fails again to comply with the criteria for operating a business under paragraph five within one year as from the date the Commission issues the first order imposing a fine, the Commission may issue an order to revoke the registration of the registrant. The competent official shall notify such person of the said order without delay.”

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 the Royal decree prescribes that an operation of any business which provides services relating to electronic transactions be subject to licensing, a person intending to operate such business shall submit an application for a licence to a competent official as prescribed in the Royal Decree.

The qualifications of the applicant, the criteria and methods of the application, the issuance of a licence, the renewal of a licence, the surrender of a licence and the suspension or revocation of a licence shall be in accordance with the criteria, methods and conditions prescribed in the Royal Decree.

In the operation of the business, a licensee must comply with the criteria prescribed by the Royal Decree, in accordance with the Notification prescribed by the Commission, or in accordance with the conditions in the licence. The criteria under the Royal Decree shall prescribe compensation or remedies for persons sustaining losses from the operation of the business.

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

In the case where the violator under paragraph four fails to undertake rectification in accordance with the order of the Commission, or violates or fails to comply with the criteria for operating a business under paragraph three once again within the period of one year as from the day the Commission issues the first order imposing a fine, the Commission may issue an order to revoke the licence of the licensee. The competent official shall notify such person of the said order without delay.”

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

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“Section 34/1. For the purpose of supervising the operation of businesses providing services relating to electronic transactions under this Chapter, the Commission, the Agency, or the State agency who is responsible for supervision under Section 32 paragraph three may issue a Notification prescribing additional details on the matters prescribed under the Royal Decree issued under Section 32, insofar as they are not contrary to or inconsistent with such Royal Decree.

Section 34/2. For the purpose of supervising and managing the operation of businesses providing services relating to electronic transactions to be in accordance with this Act or a Royal Decree issued under Section 32, a competent official of the State agency or the Agency having the duty to supervise the operation of businesses providing services relating to electronic transactions shall have the following duties and powers:

(1) to issue a written instruction to a service provider, or personnel of a service provider, or to any person, to require them to give information, document, or any evidence relating to the operation of such service-providing business;

(2) to examine and gather facts to report to the Commission, in the case where the service provider has committed an offence or caused loss due to violation or failure to act in accordance with this Act or a Royal Decree, a Notification of the Commission, or a condition in the licence;

(3) to enter the premises of a service provider between the hours of sunrise and sunset, or during the office hours of such premises, to investigate and gather facts, or to seize or attach documents and evidence, and any other object which is pertinent to the provision of services that is suspected to be possessed for use or to have been used in the commission of an offence.

A competent official shall, in the performance of duties by under this section, show an identification card issued by the State agency or the agency having the duty to supervise, and relevant persons shall provide 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):

“Once a Royal Decree has been enacted under paragraph one, a Court or an organ under the Constitution may consider the application of any criteria prescribed under such Royal Decree to the procedures relevant to the trial and adjudication of cases by the Court or to the rendering of decisions on disputes, as the case may be, so that such proceedings are appropriate to their duties and powers according to the law, and may also prescribe additional criteria to be published in the Government Gazette.”

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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 established an Electronic Transactions Commission consisting of a Chairperson appointed by the Council of Ministers from qualified persons, the Permanent Secretary of the Ministry of 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 not more than two employees of the Agency as assistant secretaries as is necessary.

The Chairperson and a qualified member under paragraph one shall be a person with knowledge, expertise and evident ability in the fields of finance, electronic commerce, law, computer science, science or engineering, social sciences, or in any other fields beneficial to the performance of work by the Commission. Herewith, not less than one half of the total number of the qualified members shall be persons who are not Government officials nor persons who perform work in a State agency having a post or salary.

The criteria and procedures for the acquisition of the Chairperson and a qualified member 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 following duties and powers:

(1) to consider and approve electronic transactions strategy plans as proposed by the Agency under section 43 paragraph two;

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

(3) to prescribe digital technology standards for the part relating to electronic transactions;

(4) to supervise and monitor the implementation of the strategic plan under (1), to gather information and problems relating to the use of electronic transactions which effect to operation and development of digital technology for referral to the National Digital Economy and Society Commission;

(5) to make recommendations to the National Digital Economy and Society Commission and the Council of Ministers in the proposal or amendment of laws relating to

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the development of electronic transactions and the protection of intellectual property relating to the use of electronic transactions;

(6) to make recommendations or to give advice to the Minister in the enactment of a Royal Decree under this Act;

(7) to issue Regulations or Notifications for the execution of this Act or for the benefit of promoting and supporting the use of electronic transactions;

(8) to supervise the operation of businesses providing services relating to electronic transaction under this Act;

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

In the execution of tasks to be in accordance with the duties and powers under paragraph one, the Commission may issue in writing to require a State agency or any person to give an explanation, to give a statement of facts, or to give a statement or to submit relevant documents or evidence for the performance of its work.

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

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

Upon expiry of the term under paragraph one, if no new Chairperson or qualified member is appointed, the Chairperson and qualified members vacating office at the expiration of such term shall remain in office to continue to perform their duty until a new Chairperson and qualified member is appointed and takes office, however, this shall not be more than ninety days as from the day of the vacation of office of the Chairperson and qualified member at the expiration of such term.

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

(1) death;

(2) resignation;

(3) removal from office by the Council of Ministers due to misbehaviour, misfeasance or dishonesty in the performance of duties, or incompetence.

(4) being an incompetent or a quasi-incompetent person;

(5) having been imprisoned by a final judgement to imprisonment, except for an offence committed by negligence or a petty offence;

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Section 40. In the case where the Chairperson or a qualified member vacates office prior to the expiration of their term, the Commission shall consist of the remaining members and appointment shall be made of a Chairperson or a qualified member for the vacated office within sixty days from the day the office is vacated, except in the case where the remaining term of the member is less than ninety days, and the newly appointed person shall be in office for the remaining term of office of the person whom they have replaced.”

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 conducted via 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 perform the duty as the clerical agency of the Commission.

The Agency shall prepare a strategic plan on electronic transactions for recommendation to be approved by the Commission under section 37(1) and refer to relevant agencies for action.”

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 to be made by the Agency under section 43 paragraph two shall be consistent with the National Digital Economy and Society Development Plan and Policy under the law on the development of digitality for the economy and society, which shall prescribe at least the following:

(1) mechanisms and measures for the development of an infrastructure for digital technology, to accommodate the use of electronic transactions, electronic commerce and businesses providing services relating to electronic transactions and State sector electronic transactions;

(2) measures for the promotion and support of making available service systems for the conclusion of electronic transactions, electronic commerce, and the provision of electronic transaction services using digital technology to aid in the development of the country in different areas;

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(3) procedures to support the development of standards and rules for the use of digital technology to enable the system to interconnect securely, be ready to use, and is trustworthy in providing services;

(4) guidelines and measures relating to the promotion of creating and developing personnel in the field of electronic transactions, electronic commerce and businesses providing services relating to electronic transactions and State sector electronic transactions, including the adaptation of the use of relevant digital technology;

(5) guidelines for the promotion and support of education, research and study of digital technology relating to electronic transactions, electronic commerce, and the provision of electronic transaction services, including to promote the dissemination of knowledge to members of the public to benefit from 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 a business providing services relating to electronic transactions without notifying a competent official as prescribed in a Royal Decree under section 33 paragraph one, or being a violation of an order of a competent official to suspend the provision of services or an order to prohibit the provision of services for the part relating to electronic transactions in the operation of a business under section 33 paragraph three, or under section 33 paragraph five, as the case may be, or operates a business providing services relating to electronic transactions after the competent official has withdrawn the receipt of notification under section 33 paragraph six shall be liable to imprisonment for a term of not more than one year or to a fine of not more than 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 a business providing services relating to electronic transactions without having registered with the competent official as prescribed in a Royal Decree under section 33/1 paragraph one, or operates a business providing services relating to electronic transactions after their registration is ordered to be revoked under section 33/1 paragraph four or paragraph eight, as the case may be, shall be liable to imprisonment for a term of not more than two years or to a fine of not more than two hundred thousand baht, or to both.”

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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 a business providing services relating to electronic transactions without having received a licence under section 34, or operates a business providing services relating to electronic transactions while an order has been made to suspend their licence, or after an order has been issued by the Commission to revoke their licence, shall be liable to imprisonment for a term of not more than three years or to a fine of not more than three hundred thousand baht, or to both.”

Section 25. The Electronic Transactions Commission in office on the day prior to the date 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 day this Act comes into force, which remains effective, shall continue to be in effect, and when the Electronic Transactions Commission has been appointed under the Electronic Transactions Act, B.E. 2544 (2001) as amended by this Act, and where such act is not yet completed, such act shall be completed in accordance with the prescription of the 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

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Remarks : The rationale for the promulgation of this Act is that currently, the law on electronic transactions is limited, with some obstacles in the enforcement of law, together with a rising trend and amount of contracts to be concluded in the form of electronic transactions between parties located in different countries. It is therefore necessary to promulgate this Act to make the law on electronic transactions compliant with international standards, and to improve the mechanisms for supervising the operation of businesses providing services relating to electronic transactions to be clear and compliant with the development of digitality for the economy and society.

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