

## Electronic Transaction Bill: A By-Section Explanatory Note<sup>1</sup>

This explanatory note consists of a table explaining the framework of the Electronic Transaction Bill, the general principles of which has been approved by the Cabinet. The Bill is currently under legal review by Law Reform Commission and Office of the Council of State. The public consultation is being carried out on the current version of the Bill, which has passed the second reading of Law Reform Commission. The comments received will be considered during the third and final reading before the final version of the Bill returns to the Cabinet to be proposed to the Parliament for deliberation.

The Electronic Transaction Bill is co-sponsored by the Ministry of Digital Economy and Society (represented by Electronic Transaction Development Agency) and the Strategic Transformation Office of the Prime Minister’s Office. The objective of the proposal is to ensure that the electronic transaction law, the legal foundation of Thailand’s digital economy, remain relevant and effective in the present time. In addition, it can further support the development of new technologies, practices, and know-hows relating to electronic contracts and transactions.

The Bill contains the following main contents:

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<sup>1</sup> Prepared by the Secretary Team of Law Reform Commission, Office of the Council of State, updated as of 8 July 2024.

Topics	Explanations	Corresponding provisions in the international instruments
<b>Status</b>	Not the final version, updated after the second reading of the Law Reform Commission	-
<b>Objective</b>	Complete overhaul of the Electronic Transaction Act B.E. 2544 (2001) (the ETA hereafter)	-
<b>Rationale</b>	<p>The ETA has been in force for over two decades. During this time, new technologies pertaining to electronic transactions have emerged rendering the current law obsolete or inconsistent with the practices of electronic transactions of the present days. This discrepancy reduces the credibility of electronic transactions and thus deters businesses and people from engaging in the digital method of transaction.</p> <p>In addition, since the enactment of the ETA in the early 2000s, the United Nations has published several model laws in support of the electronic transaction in more contexts than ever before.</p> <p>To this end, the ETA requires a complete overhaul in order to better support economic activities in the online setting, reducing transaction costs, and ultimately increasing the international competitiveness of Thailand.</p>	-
<b>Scope</b>	<p>The Electronic Transaction Bill (ETB hereafter) will be applicable to all kinds of transactions including transactions between private parties, or between a private party and a government agency, except in the case that there is a specific law providing the method of electronic transaction that is of an equivalent standard to the ETB (Section 7)</p> <p>The following transactions are exempted from the ETB (i.e. require the traditional, non-electronic method of transaction):</p>	-

	<ul style="list-style-type: none"> <li>- Transactions that require counterparties to be physically present in front of a government officer</li> <li>- Transactions that require counterparties to express their consent in front of a government officer</li> <li>- Other types of transactions as proclaimed by a Royal Decree that can be enacted subsequent to the introduction of the ETB (Section 6)</li> </ul>	
<p>General Principles of Legally Recognizable Electronic Information and Electronic Document</p>		
<p><b>General principle of functional equivalence</b></p>	<p>Electronic information and electronic transaction created in consistence with relevant provisions of the ETB shall be given legal binding force. (Section 10)</p> <p>Electronic information and a printout of electronic information, which contains correct and complete information as per its original electronic information, shall be regarded as a document or a piece of evidence according to the Civil Procedure Code, Criminal Procedure Code, and other relevant laws. (Sections 10 and 17)</p> <p>An electronic transaction includes any civil and commercial transaction, as well as administrative act, administrative order, and administrative contract, or any other expression of intent by government agency or officer, done in an electronic mean or method. (Section 5)</p> <p>Electronic information means messages created, sent, received, stored, or processed with an electronic method. (Section 5)</p>	<p>Articles 5 and 9, UNCITRAL Model Law on Electronic Commerce (1996)</p> <p>Article 8, UN Convention on the Use of Electronic Communications in International Contracts (2007)</p>
<p><b>Credibility of electronic information</b></p>	<p>The party that questions the credibility of electronic information shall bear the burden of proof before the court of law (Section 12)</p>	<p>Article 9, UNCITRAL Model Law on Electronic Commerce (1996)</p>

<b>Creation of electronic document</b>	<p>Electronic information, which is recognized as document by law, shall be created such that the information contained therein can be stored and retrieved for reference. As an option of compliance with this provision, Electronic Transaction Development Agency (ETDA hereafter) may announce a method of creation of electronic information. (Section 13)</p> <p>This provision applies to the case in which electronic document is created in replacement of, or in addition to the original physical document.</p>	<p>Article 10, UNCITRAL Model Law on Electronic Commerce (1996)</p>
<b>Safekeep of electronic document</b>	<p>Safekeeping electronic information, which is recognized as safekeep or storage of document by law, shall be done such that</p> <ul style="list-style-type: none"> <li>- the information can be accessed and retrieved for use;</li> <li>- it is created, transmitted, and displayed in the format that can be correctly displayed, <u>and</u>;</li> <li>- it shall contain the information regarding the origin, destination, date, and time relevant to the transmission and receipt of the information (Section 14)</li> </ul> <p>This provision applies to the case in which electronic document is stored or safekept after it was created as a replacement, or in addition to the original physical document.</p>	<p>Article 19, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)</p> <p>Article 10, UNCITRAL Model Law on Electronic Commerce (1996)</p>
<p>Reliable Method in Electronic Transactions</p>		
<b>Explanation of Reliable method or method as prescribed by ETDA</b>	<p>Reliable method is the method of electronic transaction that has been widely used or adopted by the public or generally accepted by relevant technology experts. Establishing a reliable method is <i>a matter of fact</i>. This means that compliance can be achieved by referring to the relevant prevailing social, economic, and technological developments of the time. This approach to electronic transaction is expected to allow for new and innovative electronic</p>	<p>-</p>

	<p>transaction to receive legal recognition without waiting for regulatory approval or the introduction of any supporting secondary legislative instrument. This new approach (not found in the ETA) is hoped to further support the development of Thailand’s digital economy by lowering the cost of compliance and increasing certainty and business</p> <p>In resolving the dispute over what is a reliable method, the Court shall inquire all relevant facts to come to a judgement. Such facts may include what methods, standards, or technologies that the public widely accepts as reliable. Other relevant facts include the publishment of industry standards, international standards, or guidelines, by reputable sources.</p> <p>Reliable method is used to for the following components of electronic transaction</p> <ul style="list-style-type: none"> <li>- creation of digital original copy</li> <li>- Time and location of document</li> <li>- Registered mail</li> <li>- Stamp of juristic/legal person</li> <li>- Identity proofing and authentication</li> </ul> <p>In addition, it is stipulated as condition of Electronic Transferable Records and Electronic Transaction Service (see below).</p>	
<p><b>Roles of ETDA regarding the establishment of reliable method</b></p>	<p>In support and facilitate the adoption of electronic transaction according to the ETB, ETDA performs two following roles:</p> <ol style="list-style-type: none"> <li>1. As an alternative to the reliable methods, ETDA may also prescribe the methods that are in compliance with relevant provisions of the ETB. Those that may prefer to follow the methods that are published by the responsible government agency may choose to follow these methods instead of the reliable method.</li> <li>2. ETDA can publish a list of standards or technologies that it regards as reliable methods. (Section 26 (1))</li> </ol>	<p>-</p>

	<p>3. ETDA can also certify the implementation of standards or technologies in an electronic transaction as proposed by a person as reliable method. (Section 26 (2))</p> <p>In case of a dispute whether the standard or technology in question is a reliable method, the burden of proof shall be born according to the Civil Procedure Code or Criminal Procedure Code, as the case may be.</p> <p>In case of a dispute whether a party has implemented correctly and completely the standard or technology, which ETDA has certified as a reliable method according to Sections 26 (1) or (2), the party challenging the implementation shall bear the burden of proof as well as all the associated costs of proof, except in the case that the challenging party falls under the definition of consumer according to the consumer protection law. (Section 27).</p>	
<p><b>Creation of electronic original copy</b></p>	<p>An electronic original copy, which is recognized as original copy by law, shall be created by a reliable method that can retain the completeness and correctness of information from the creation process through the display or utilisation of the information in the subsequent time, OR according to the method prescribed by ETDA. (Section 15)</p> <p>The same standard of electronic original copy applies to the case in which an electronic original copy is created from a physical original copy. (Section 16)</p> <p>A printout of digital original copy may be used as evidence in court if it contains correct and complete information as per its original electronic information (Section 17).</p>	<p>Article 8, UNCITRAL Model Law on Electronic Commerce (1996)</p>
<p><b>Timestamps of electronic document</b></p>	<p>A time and location of an electronic document, which is recognized by law, are those that are recorded with a reliable method in reference to standard</p>	<p>Article 18, UNCITRAL Model Law on the Use and Cross-border Recognition of</p>

	time and to the electronic information contained therein, OR according to the method prescribed by ETDA. (Section 18)	Identity Management and Trust Services (2022)
<b>Registered mail</b>	An electronic equivalence of registered mail, which is recognized by law, is created by a reliable method that allows for verification of date and time of transmission, receipt, sender and recipient, as well as any subsequent changes, OR according to the method prescribed by ETDA (Section 19)	Article 20, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)
<b>Electronic Signature</b>	An electronic signature, which is recognized by law, is created according to the method prescribed by ETDA (Section 20)	Article 16, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)
<b>Seal of juristic or legal person</b>	An electronic seal of juristic or legal person, which is recognized by law, is created by a reliable method, OR according to the method prescribed by ETDA. (Section 21)	Article 17, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)
<b>Identity proofing and authentication</b>	<p>Identity proofing by an electronic mean, which is recognized by law, shall be done with a reliable method that can collect and verify the correctness of personally identifiable information, as well as can verify the linkage between the identified person and the personally identifiable information in question. (Section 24)</p> <p>Personal authentication by an electronic mean, which is recognized by law, shall be done with a reliable method regarding the use of an identifier to authenticate a person, who has been previously identified with the personally identifiable information. (Section 25)</p>	Articles 1, 5, and 9, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)

	Alternatively, identity proofing by an electronic mean and personal authentication by an electronic mean can be done according to the method prescribed by ETDA. (Sections 24 and 25)	
<b>Public announcement</b>	A public announcement, which is recognized by law, shall be done on the website of online media or on the website of the person required by law to make such an announcement, OR according to the method prescribed by ETDA. (Section 23)	-
<b>Electronic stamp duty</b>	Stamp duty and other duties or excises can be paid through the electronic method prescribed by the relevant duty-collecting government agencies. (Section 22).	-
<b>Future proofing provision</b>	If a transaction cannot still be carried out by an electronic means because a specific law prescribes the criteria, procedure, or conditions, with which cannot be complied electronically, the ETB allows for an introduction of a Royal Decree (secondary instrument) to stipulate the criteria, procedure, or conditions that enable that transaction to be carried out electronically. (Section 27)	-
<b>Formation of an Electronic Contract</b>		
<b>General principle</b>	A person may express his or her intent in the form of electronic information. An expression of intent in the form of electronic information shall not be denied its legal binding effect. (Section 29)	Articles 11 and 12, UNCITRAL Model Law on Electronic Commerce (1996)
<b>Transmission of electronic information</b>	A person may send electronic information by himself. In such a case, the electronic information is of the sender himself. The electronic information is also deemed to be of that person if: <ul style="list-style-type: none"> <li>- the information is sent by someone else with authority to send on his behalf</li> </ul>	Article 13, UNCITRAL Model Law on Electronic Commerce (1996)



	<ul style="list-style-type: none"> <li>- the information is sent by an automated system pre-programmed by the sender or by other persons who act in relation to the automated system on behalf of the sender (Section 30)</li> </ul>	
<b>Acknowledgement of Receipt of electronic information</b>	<p>Except when there is a case for knowing otherwise, a person is deemed to have received electronic information if:</p> <ul style="list-style-type: none"> <li>- that person has verified, according to the pre-arranged method of verification, that the electronic information belongs to the sender; OR,</li> <li>- that person has received the electronic information from someone else acting on the sender's behalf or from an automated system acting on the sender's behalf (Section 31)</li> </ul> <p>In the electronic transaction context, the recipient's knowledge that the electronic information has transmitted to him is important to establish the expression of intent. To this end, the sender can be assured that his expression of intent is received by the recipient if</p> <ul style="list-style-type: none"> <li>- the transmission is carried out using the method agreed by both parties in advance; OR, (Sections 31 and 32)</li> <li>- the transmission is carried out but there has never been an agreement regarding the method of transmission, the sender must inform the recipient that the electronic information is transmitted to an electronic system under the control of the recipient (Section 32).</li> </ul>	Article 14, UNCITRAL Model Law on Electronic Commerce (1996)
<b>Automation and Electronic Contract</b>	<p>The ETB provides for the use of automated system in the electronic contract making process. As stipulated above, the automated system can assist with the expression of intent to form a contract by transmitting electronic information containing such expression to the recipient.</p> <p>In addition, the communication of electronic information by an automated system is deemed to be sufficient evidence that the transmission of electronic information has successfully reached the recipient. Nevertheless, such a rule does not imply anything regarding the content contained in the electronic information. (Section 36)</p>	Articles 11 and 12, UN Convention on the Use of Electronic Communications in International Contracts (2007)

	<p>It is possible, especially in the e-commercial context, that a statement be made publicly soliciting a response to form a contract. This public solicitation may be done with an input from a person or can be executed by an automated system working under a pre-determined set of programming codes. In responding to the solicitation, the responder shall not be deemed or regarded as accepting the offer. Instead, the initial statement made shall be regarded as an invitation to make an offer, except in the case that the person makes it clear that he intends to make an offer in response to that public solicitation. (Section 37)</p> <p>Ultimately, the ETB stipulates that no one shall deny the legal binding effect of an electronic contract made with the involvement of an automated system. In other words, it is possible to have a legally enforceable contract made by the transmission of electronic information between two automated systems or between an automated system and a person. (Section 38)</p>	
<p><b>Mistakes and Errors</b></p>	<p>The ETB makes some provisions to account for mistakes or errors regarding the formation of electronic contract.</p> <p>In a case that electronic information containing the same message is transmitted repeatedly for many times in a short period, the recipient has the right to treat each piece of electronic information as distinct and thus may act to each piece of electronic information accordingly. The only exception is when the recipient knows or has taken reasonable precaution to know that the repetitive transmission in the short period is done by mistake. (Section 35).</p> <p>Specifically in the case that a natural person mistakenly inputs information in an automated system of other person and the system does not have a</p>	<p>Article 14, UN Convention on the Use of Electronic Communications in International Contracts (2007)</p>

	<p>channel to correct the mistaken input, the natural person, acting by himself or by his agent, has the right to withhold the transmission of electric information that contains the mistaken information under the following conditions:</p> <ul style="list-style-type: none"> <li>- The natural person or his agent has informed the other party or the controller of the automated system of the mistaken information; AND,</li> <li>- The natural person or his agent has not received any benefit or take advantage of the good or service received from the other party. (Section 39)</li> </ul>	
<b>Variation by agreement</b>	The parties to the contract may mutually agree to vary the terms of its agreement, including the provisions of this Chapter (Formation of Electronic Contract), except Section 39.	Article 4, UNCITRAL Model Law on Electronic Commerce (1996)
<b>Electronic Transferable Records (ETRs)</b>		
<b>General principle</b>	A transferable record may be created in an electronic form and will be legally enforceable if complying with the relevant provision of the ETB. (Section 41)	Articles 6 and 7, UNCITRAL Model Law on Electronic Transferable Records (2017)
<b>Features of ETR</b>	<p>A legally enforceable ETR shall have the following features:</p> <ul style="list-style-type: none"> <li>- Contains all messages/terms as stipulated by law that a transferable record shall have, though this does not prevent an ETR to contain additional messages/terms or information so far as it does not affect the right or duty of the counterparties;</li> <li>- Use a reliable method to control the rights over the ETR, including transfer, endorsement, amendment, destruction, OR use the method prescribed by ETDA;</li> </ul>	Article 10, UNCITRAL Model Law on Electronic Transferable Records (2017)

	<ul style="list-style-type: none"> <li>- Use a reliable method to ensure that the information as well as any subsequent amendments contained in the ETR is correct, OR use the method prescribed by ETDA. (Section 42)</li> </ul>	
<b>Conversion between physical transferable record and electronic ETR</b>	<p>The replacement of a physical transferable record with an ETR and vice versa shall be carried out by a reliable method that retains correct and complete information and shall also;</p> <ul style="list-style-type: none"> <li>- Indicate on the replaced transferable record that it has ceased its validity; AND</li> <li>- Indicate on the replacing transferable record that it has replaced a physical or electronic transferable record as the case may be.</li> </ul> <p>The replaced transferable record, whether it be physical or electronic, shall be invalidated such that it cannot be used any more.</p>	Article 17, UNCITRAL Model Law on Electronic Transferable Records (2017)
<b>Control</b>	<p>The control of a physical transferable record is determined by possession of such an instrument. As a result, the ETB creates a functional equivalence to physical possession. To this end, it stipulates that the control of ETR shall be established by a reliable method that can ensure a person with an exclusive controlling right over the ETR and can identify that controlling person, OR by the method prescribed by ETDA. (Section 44)</p> <p>The method implemented to establish control must also be able to transfer the control from one person to another. (Section 45)</p>	Article 11, UNCITRAL Model Law on Electronic Transferable Records (2017)
<b>Endorsement</b>	<p>In Thailand, certain transferable records are required to be endorsed as a condition of the transfer. As a result, the ETB also stipulates that where the law requires as such, endorsement is achieved when the necessary message has been added to the ETR. (Section 46)</p>	Article 15, UNCITRAL Model Law on Electronic Transferable Records (2017)
<b>Amendment</b>	<p>Similarly, the amendment of a transferable record is typically allowed. To ensure a proper amendment, an ETR shall only be amended by a reliable method that can identify the amended information.</p>	Article 16, UNCITRAL Model Law on Electronic Transferable Records (2017)

## Electronic Transaction Service

<p><b>Scope of service</b></p>	<p>In practice, many businesses and most people do not develop their own electronic system or method that can be used to support the execution and management of electronic transaction. They rely on professional service providers to provide necessary services that allows for a legally enforceable, compliant electronic transaction or electronic contract. Thus, the ETB establishes the following range of services based on the current practices in Thailand and also allows new services to be added by the announcement of a ministerial regulation.</p> <ul style="list-style-type: none"> <li>- Identity proofing and authentication</li> <li>- Electronic signature</li> <li>- Timestamping</li> <li>- Transmission and storage of electronic information for the purposes of electronic transaction</li> <li>- Registration and certification of websites and domain names</li> <li>- Electronic transferable record service (Section 48)</li> </ul> <p>Certain service providers, notably identity proofing and authentication service providers, are regulated by their respective royal decree issued under the auspices of the current Electronic Transaction Act B.E. 2544 (2001). The ETB also provides a transitional provision to allow for the service providers that are licensed or registered under the current regime to be recognized as reliable service providers under the new regime. (Sections 64)</p>	<p>Articles 14 and 22, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)</p>
<p><b>Two-tiered approach to the governance of the service providers</b></p>	<p>In doing away with the licensing and registration schemes of the current law, the ETB introduces a two-tiered system of service providers.</p>	<p>Articles 23 and 24, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity</p>

	<p>First, all service providers must follow a set of responsibilities and duties prescribed therein to be consider legal and compliant with the law. (Section 49)</p> <p>Second, ETDA may certify that a service offered by a service provider is a reliable method (Section 26). In addition, a service provider may submit a request to be considered as a reliable service provider according to the criteria and procedure to be announced by ETDA. (Section 52)</p> <p>ETDA can also proactively certify a service provider as a reliable service provider without any request in the case that such a service provider has been widely used or employs methods recognized or compliant with the international standards. (Section 53)</p> <p>To this end, the reliable service will receive the preferential treatment in Section 27 above as well as be able to limit its exposure to potential liabilities or damages suffered by its users or related parties to the service, provided that</p> <ul style="list-style-type: none"> <li>- It has set out the terms of use and limitations of the service and communicated them to the injured user and the related party clearly, AND</li> <li>- The injured user has exceeded or violated the terms of use and limitations. (Section 51)</li> </ul> <p>On the other hand, any service provider that fails to follow the set of responsibilities above will bear the responsibility for any consequential losses in addition to damages or compensations as a result of breach of contract or liabilities under other applicable laws. (Section 50) In addition, the violating service provider may also be blacklisted by ETDA (Section 54). In the</p>	<p>Management and Trust Services (2022)</p>
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	same process, if the violating service provider is certified as reliable service provider, the certification shall be revoked.	
<b>Responsibilities of a service provider</b>	<p>As a minimum, all service providers with good standing are responsible for using reliable methods to undertake the following:</p> <ul style="list-style-type: none"> <li>- Service relating to the creation, transmission, storage, or process of electronic information or electronic transaction, including the record keeping of evidence pertaining to electronic transactions;</li> <li>- Provision of reliable system, operation, and personnel for service;</li> <li>- Risk management measures;</li> <li>- Complaint and redress channel; AND,</li> <li>- Cyber security including measures relating to complaint, corrective actions, damage control and limitation, and compensation in the case of failures in providing the electronic transaction service.</li> </ul> <p>ETDA may prescribe the standards for the reliable method for any of the above. If ETDA so prescribes, that standards shall be the minimum standards of that respective matter. (Section 49)</p>	Articles 14 and 22, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022)
<b>Important Transitional Provisions</b>		
<b>Digital Platform</b>	<p>Digital Platform Service Providers are now regulated by the Royal Decree on the Operation of Digital Platform Services subject to Prior Notification B.E. 2565 (hereinafter referred to as “Royal Decree”), which has been issued pursuant to the Electronic Transaction Act B.E. 2544 with effect as from 20 August 2023. With the repeal of the current Electronic Transaction Act, the Royal Decree will automatically cease to have the legal effect.</p> <p>The ETB provides transitional provisions to ensure that digital platform service providers are supported by the continuation of a proper legal framework. In other words, the transitional provisions will allow for the current regulatory</p>	-

	framework of the Royal Decree to still be enforceable until a new digital platform law becomes effective.	
<b>Identity Proofing and Authentication</b>	Service providers of identity proofing and authentication are currently under Royal Decree on Supervision of Service Businesses Relating to Digital Identification and Authentication Systems that Are Subject to Licensing, B.E. 2565 (2022). With the repeal of the current Electronic Transaction Act, these service providers will be certified as reliable service providers under the ETB and can continue their respective businesses as usual.	-