

Legal Express

Electronic Signature

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An electronic signature, or e-signature, is legally recognised under Thai laws, whereby a wet ink signature is not strictly required for a valid contract. In this connection, an e-signature may be a letter, character, number, sound or any other symbol created in electronic form to identify and establish acceptance of the signatory of contents of an electronic document.

This document aims to provide a general overview of the legal requirements, admissibility and enforceability of electronic signatures in Thailand.

Electronic Transactions Act B.E. 2544 (A.D. 2001)

The Electronic Transactions Act B.E. 2544 (A.D. 2001) (as amended) (the “ETA”) is the main legislation governing and recognising the functional equivalence of electronic data, as well as the validity of e-signature in Thailand.

Validity Requirements

Conditions

Section 9 provides that an e-signature is deemed to be legally valid if the following conditions are met:

- (a) the e-signature is created by a process which is capable of identifying the signatory and demonstrating the signatory’s intention regarding the information contained in the data message; and
- (b) the above process is (i) reliable and appropriate for the objectives for which the data message is generated, taking into account the circumstances or related agreements; or (ii) capable of verifying the signatory’s identity and demonstrating his/her intention regarding the information contained in the data message either by itself or with other evidences. In determining the reliability of such process, certain key criteria shall be taken into consideration, including amongst others, integrity of the method or equipment used in identifying the signatory, nature and size of the transaction or communication system.

Presumption of Reliability

Section 26 further provides a legal presumption of reliability of an e-signature if it possesses the following characteristics:

- (a) the e-signature creation data is linked to the signatory and to no other person;
- (b) the e-signature was created under the signatory's control and of no other person;
- (c) any subsequent alteration to the e-signature is detectable; and
- (d) where the law requires a signature to certify completeness and integrity of the information, any subsequent alteration to the information must be detectable.

Foreign E-signatures

Section 31 recognises that an e-signature created or used in a foreign country shall have the same legal effect as those created or used domestically, provided that the system used in creating or using such e-signature meets the same standard of reliability under the ETA.

Non-permitted Transactions

Under the Royal Decree on Types of Transactions which are Exempted from Electronic Transactions Laws B.E. 2549 (A.D. 2006), the provisions of the ETA (including those concerning e-signatures) shall not apply to transactions relating to family and succession matters. Likewise, they are not currently suitable for certain transactions (e.g. sale of immovable property or special types of movable property, mortgage, lease of immovable property for three years or more and etc.), which are required to be made under statutory formalities and registration in order to be fully enforceable

Admissibility of E-signatures

E-signed documents are admissible as evidence in legal proceedings in Thailand. In particular, Section 8 states that where the law requires any transaction to be made in writing, evidenced in writing or supported by a document, it shall be deemed to have fulfilled such requirements 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. Likewise, Section 11 further endorses that admissibility of data message (including e-signed documents) as evidence in legal proceedings shall not be denied solely on the ground that it is in electronic form.

E-signature Guideline

On 29 May 2020, the Electronic Transactions Development Agency (the "ETDA") has officially released the Recommendation on ICT Standard for Electronic Transactions re: Electronic Signature Guideline (the "Guideline") in order to promote better understanding on the uses of e-signatures.

The Guideline touches upon an overview of e-signatures and categorizes e-signatures into three main types as follows:

- (a) General e-signatures created in accordance with Section 9 such as email signature, scanned signature, stylus or acceptance button;
- (b) Reliable e-signatures created pursuant to the requirements of Section 26 such as Public Key Infrastructure (PKI)-based digital signatures; and

- (c) Reliable and certified e-signatures created pursuant to the requirements of Section 26 and certified by the certification service provider in accordance with the certification requirements under the ETA.

The Guideline emphasizes the three elements of an e-signature, which comprise (i) verification and authentication of the signatory; (ii) intent of the signatory must be identifiable and (iii) integrity maintenance. Likewise, the Guideline provides general recommendation on the selection of e-signature such that the user shall use e-signature which is suitable and appropriate to the intended purpose as well as assess relevant risk factors associated with the e-signature, including amongst other, the legal, financial and technical risks.

In case of the use of e-signature by juristic persons, the Guideline provides two cases namely (i) e-signature on behalf of a juristic person by the authorised signatory, and (ii) e-signature on behalf of a juristic person by an attorney. In the first circumstance, the authorised signatory shall provide his/her own e-signature when signing. In the second circumstance, the attorney should arrange to have the evidence of the power of attorney to clearly specify the name of the attorney and limitations to the power of attorney.

This document is solely intended to provide an update on recent development in Thailand legislation and is not purported to provide a legal opinion, nor a legal advice to any person.

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