Establishing an Enabling Cross-Border Legal Environment for Regional Connectivity:

The United Nations Convention On the Use of Electronic Communication in International Contracts, 2005 and Electronic Transactions Law in Thailand

Surangkana Wayuparb
CEO of ETDA

Colombo, 6 September 2012
Outline

I. Responsibilities of ETDA
II. Current Status of e-Transactions in Thailand
III. Legal Infrastructure
IV. e-Justice covering e-Court: Challenging Flagship
I. Responsibilities of ETDA

Ministry of ICT

Thai Government

Office of the Permanent Secretary

The Meteorological Department

National Statistics Office

Public Organization

SIPA
(Software Industry Promotion Agency)

ETDA
(Electronic Transactions Development Agency)

EGA
(E-Government Agency)

Public Company

TOT

CAT Telecom

Thailand Post
More Important Roles of ETDA

- To support the Electronic Transactions Commission chaired by ICT Minister and Prime Minister, and have charge and control of the execution of Electronic Transactions Law.

- To serve as the Secretary of National Cybersecurity chaired by Prime Minister.
Develop, Promote & Support e-transactions

Lay down ET infrastructure:
- Policy & Laws, Technical & Standards,

Strengthen Information Security

R & D in electronic transactions and ICT related areas

Secure e-Transactions: Opportunities for Thailand
II. E-Transactions in Thailand

Any activity utilizing electronic means-wide interpretation

e-Trading and Service

e-Filing and Reporting

e-Medical record

ET Classification

e-Payment

e-Certificate
**e-Transaction Value in 2010**

### e-Payment Value
- **Value:** 713.40 trillion baht
- **Source:** 2010 Bank of Thailand

### e-commerce
- **Value:** 608,587 million baht
  - (e-Commerce = 56%, e-Auction = 44%)
- **Source:** 2010 Bank of Thailand

### BUSINESS
- **Computer:** 23.5 %
- **Internet:** 16.5 %
- **Website:** 6.1 %
  - (purchase 2.3 % & 1.6%)
- **Source:** 2009 National Statistical Office

### POPULATION
- **Computer:** 32.0 %
- **Mobile phone:** 66.4 %
- **Internet:** 23.7 %
- **Social Network (Facebook):** 14,142,620
  - (80% internet user)
- **Source:** 2011 National Statistical Office

### HOUSEHOLD
- **Computer:** 24.7 %
- **Internet Connection:** 13.4%
  - (Narrow Band 32.3 %, Broadband 61.1%)
- **Fixed Line:** 18.8 %
- **Source:** 2011 National Statistical Office

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* 30 Baht = 1 USD
Thailand internet, computer and mobile phone users are increasing continuously

Source: Survey of Thailand ICT usage in establishment and household by National Statistical Office
Thailand e-commerce value increases every year

### 2.1 B2G without e-Auction

- **2006:** 128,476
- **2007:** 193,418
- **2008:** 217,458
- **2009:** 251,699
- **2010:** 298,843

### 2.2 B2G with e-Auction

- **2006:** 305,159
- **2007:** 427,460
- **2008:** 527,538
- **2009:** 629,611
- **2010:** 608,587

### B2G* (Million baht)

- **2006:** 4,611
- **2007:** 23,184
- **2008:** 3,637
- **2009:** 34,107
- **2010:** 23,710

### Total (Million baht)

- **2006:** 4,611
- **2007:** 23,184
- **2008:** 3,637
- **2009:** 34,107
- **2010:** 23,710
e-Commerce Value of South-East Asia/Pacific  2010 – 2013

Billion USD

Source: “Facilitation of Sharing and Exchanging ASEAN e-business” by Donatus Herry Swansito PT. Indosat, Tbk from 1st ASEAN CIO Forum 2012, and IDC 2010 and ComScore 2011

* อ. 2012 – 2013 Approximately
Secure e-Transaction Development

- **Economy**
  - e-Commerce
  - e-Trade
  - e-Health
  - Government Online Services
  - Other

- **Quality of Life**
  - Other

**Application Front-end**
- e-Commerce
- e-Trade
- e-Health
- Government Online Services
- Other

**Application Back-end**
- e-Payment
  - e=Procurement
- e-Document
- e-Authentication
  - PKI, GuardTime, Two Factor Authentication, Trust Mark, Local Mapping
- Other

**Logical Infrastructure**
- √ Standards
- √ Security & Privacy
- √ Laws
  - Code of Conducts & Best Practices

**Physical Infrastructure**
- Communication Network Infrastructure

Increase the Volume and the Value by creating and strengthening application back-ends

ETDA
Electronic Transactions Development Agency (Public Organization)
III. Legal Infrastructure :
IT Laws Development in Thailand

28 Feb 1996
Thai Cabinet approved IT 2000 Master Plan

15 Dec 1998
Electronic Transactions Act B.E. 2544 (legal effects of data messages)

3 Apr 2002
Computer-related Crime Act B.E. 2550 (criminalization)

18 Jul 2007
Electronic Transactions Act (2nd Amendment) B.E. 2551 (e-Doc, ETC Secretariat transferred from Science Ministry to MICT)

14 Feb 2008

Six IT Laws Initiative
- Electronic Commerce
- Electronic Signature
- Computer Crime
- Electronic Funds Transfer
- Data Protection
- Universal Access
(EC & ES combined into one - ETA, EFT issued under ETA)

Subordinated Laws (Royal Decrees) Issued :-
1) Exempted from the law (Family affairs, succession)
2) Controlling E-Payment Service Providers;
3) Principles for services provided by gov. & private sectors (containing minimum requirements on access control, BCP, risk assessment for government agencies)
4) Security (including principles of ISO/IEC 27001 for Critical Infra. Agency)
Notifications issued :-
5) CP and CPS relating to PKI guidelines:
6) Paper conversion
7) Security policy and practice guideline for gov. & private sectors
8) Data protection policy and practice guidelines for gov. & private sectors
9) Certification of Printout & Authoritative Agency to certify printout

Electronic Transactions Act
B.E. 2544
(legal effects of data messages)
Functional Equivalent Approach

Technology Neutrality

Party Autonomy

**Development of THAILAND Electronic Transactions Law**

**Model Law**

- UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996
- UNCITRAL Model Law on Electronic Signatures with Guide to Enactment 2001

**To Support e-Transaction**

- Electronic Transaction Act B.E. 2544 & 2551

**To Support Cross Border e-Transaction**

- Draft of Electronic Transaction No 3 Act B.E. ....
Legal Infrastructure for Electronic Transactions


- The Royal Decree prescribing civil and commercial transactions which are exempted from the law on electronic transactions B.E. 2549 (2006)
- The Royal Decree Regulating Electronic Payment Services Business B.E. 2551 (2008)
- The Royal Decree Regulating Electronic Payment Services Business B.E. 2551 (2008)
- Notification of the Bank of Thailand No. Sor Ror Khor 1/2552 on e-Money Services Business Under category A of the Royal Decree, which requires no notification prior to operating the business
- Notification of the Bank of Thailand No. Sor Ror Khor 2/2552 on Criteria, Procedures and Conditions regulating Electronic Payment Service Business
- Notification of the Bank of Thailand No. Sor Ror Khor 3/2552 on Information Security Policy and Measures for Business Operation of Electronic Payment Services Business Operator


Notification of the Bank of Thailand No. Sor Ror Khor 1/2552 on e-Money Services Business Under category A of the Royal Decree, which requires no notification prior to operating the business

Notification of the Bank of Thailand No. Sor Ror Khor 2/2552 on Criteria, Procedures and Conditions regulating Electronic Payment Service Business

Notification of the Bank of Thailand No. Sor Ror Khor 3/2552 on Information Security Policy and Measures for Business Operation of Electronic Payment Services Business Operator
Computer Crime Act B.E. 2550

- Regulations on the arresting, confining, searching, investigating and instituting criminal prosecution against the Offender under the Computer Crime Act B.E. 2550 (2007)
- Notification of the Ministry of Information and Communication Technology on criteria on collection of computer traffic data of service Provider B.E. 2550 (2007)
- Ministerial regulations providing form of letter on the seizure or attachment of computer system B.E. 2551 (2008)
**Electronic Transactions Act**

**Version 1**
- **Chapter 1**: Legal recognition of data message and e-signature (Functional equivalent)
- **Chapter 2**: Reliable e-Signature
- **Chapter 3**: Service Business relating to e-transaction (e-Payment, e-Signature)
- **Chapter 4**: e-Transactions in the Public Sector
- **Chapter 5**: Electronic Transactions Commission
- **Chapter 6**: Penalties

**Version 2**
- 1. Expand the lists of admissibility of evidence for electronic signature
- 2. Admissibility of e-stamp duties
- 3. Accept scanned documents as original
- 4. Print out
- 5. Identifies Admissibility of e-evidence in legal proceeding

**Draft version 3**
- 1. Amendment for more effective law enforcement
- 2. Preparation and support for implementation of the United Nations Convention on the Use of Electronic Communications in International Contracts
- 3. Integration of agencies responsible for works supporting the mission of Electronic Transactions Commission.

**Impacts: Legal Infrastructure for AEC 2015**

Version 1 and 2 based on UN Model Law on e-Commerce 2001 & Model Law on e-Signature 2006
Version 3 Preparation and support for implementation of UN Convention on the Use of Electronic Communications in International Contracts

**Reasons for amending the current act:**
- To promote AEC 2015 as regards ASEAN ICT Master plan and AEC Blueprint on legal aspects
- To support the international electronic transactions
- To make foreign operators trust their Thai counterparts in their transactions.
The need of amending Electronic Transactions Act

AEC Blueprint
2008 – 2009
• Member Countries to enact their e-commerce laws
• Implement harmonized guidelines and principles for electronic contracting and online dispute resolution services
• Adopt regional framework and strategy for the mutual recognition of digital signatures
• Continued capacity building and information sharing for Member Countries on E-Commerce legal infrastructure activities

2010- 2013
• Update and/or amend relevant legislations in line with regional best practices and regulations in e-Commerce activities
• Adopt the best practices/guidelines on other cyber-law issues
• Advancing cross-border electronic transactions, through pilot implementation of mutual recognition of foreign digital signatures

2014 - 2015
• A harmonized legal infrastructure for E-Commerce fully in place in ASEAN
## Electronic Transactions Act & e-Contracts Convention

<table>
<thead>
<tr>
<th>Conformity</th>
<th>e-Contracts Convention</th>
<th>Electronic Transactions Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party anatomy</td>
<td>Designated by mutual agreement to exclude the application of e-Contracts Convention</td>
<td>Designated by mutual agreement to exclude the application of some principles (For example; the declaration of intention/data interchange/digital signature)</td>
</tr>
<tr>
<td>legal effect of electronic communications</td>
<td>Prohibited the denial for completeness or legal effect of agreement and data transacted in electronic form</td>
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</tr>
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## Electronic Transactions Act & e-Contracts Convention

<table>
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<th>Dissimilarity</th>
<th>e-Contracts Convention</th>
<th>Electronic Transactions Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope of application</td>
<td>Applied to the formation or performance of a contract between parties whose places of business are in different States</td>
<td>Applied to electronic transactions which require the legal effect according to Thai laws</td>
</tr>
<tr>
<td>Declaration of intention to any persons or automatic information system</td>
<td>Determined the legal effect which will only be an invitation of offer</td>
<td>Not specified under Electronic Transactions Act; however, the general rule followed the Civil and Commercial Code (CCC) (an invitation of offer means the unclear declaration of intention which will not cause to exist a contract)</td>
</tr>
<tr>
<td>Entered into a contract through automatic information system</td>
<td>Certified the legal effect of a contract which entered into the parties through automatic information system</td>
<td>Not specified under Electronic Transactions Act; however, there is only the stipulation regards to certifying the received acknowledgement through automatic information system</td>
</tr>
<tr>
<td>Notification of incorrect information through automatic information system</td>
<td>Stipulated for the revocation; by notifying another party as soon as possible. However, the revocation can be enforced whether such party does not use or utilize goods or services of the other party</td>
<td>Not specified under Electronic Transactions Act. However, there is the stipulation regards to the right of addressee that shall be deemed the data message, which is hold, have correctly been sent unless the addressee knew or should have known any error in the data message as received</td>
</tr>
</tbody>
</table>
Key issues to be amended in the Electronic Transactions Act (No. 3)

1. Amendment for more effective law enforcement
   ✓ Set out the assumptions relating to creation of electronic message and electronic signature to be consistent with actual practice.
   ✓ Provide that the Office of Electronic Transaction Commission (OETC) be the key agency responsible for supervision of electronic transactions business.
   ✓ Increase power of the authorized official in entering business operation premise for inspection, collection, or attachment of relevant documents or evidence.

2. Amendment to support and prepare for implementation of the United Nations on the Use of Electronic Communications in International Contracts
   ✓ Set out the legal effect of a contract made via automatic data system.
   ✓ Provide that an offer made in electronic form which is not sent to any specific person to be merely invitation to make an offer.
   ✓ Set out the obligation of a sender of electronic information to cancel a sending of electronic information resulted from incorrect input of information between the sender and the receiver of such information.

3. Integration of agencies responsible for works supporting the mission of Electronic Transaction Commission.
IV. e-Court as one component of e-Justice: Challenging Flagship

- To shift the present paper-based system to digital information, data exchange & web-based services
- Online access available 24 hours a day & 7 days a week
- To improve court efficiency: how to integrate the system, tailor-made standards, to assure the security or reliability and set rules

not only having audio recording system, case management system, e-filing system >> digital evidence admissibility and evidence weight under e-transactions law applied in the common practice
Other relevant services providers required
www.etda.or.th
surangkana@etda.or.th
Thank You