



## Issue 08 : December 2021 Laws in a nutshell - Electronic signatures

Written documents and paper-based transactions have been a part of human civilization for hundreds of years. However, the rapid growth of technology has revolutionized and disrupted many things in our lives, including how we create documents. Ink and paper have gradually been replaced by stylus and tablets with electronic signatures ('e-signatures') becoming a significant game-changer in the business world.

The **Electronic Transactions Act B.E. 2544 (2001)** and several amendments thereof were enacted as a principal piece of legislation to support the use of e-signatures.

In this issue, we would like to summarize the nature and types of e-signatures specified by law, and how the e-signature is used in practice.

### I. Nature of an e-signature

An e-signature can be letters, numbers, sounds, and any other symbol created in electronic forms in order to be composed with electronic data to illustrate a connection between a person and the electronic data to identify the e-signature owner and to show that the signatory accepts the statements of the electronic data.

### II. Type of e-signatures

- **Regular e-signature**

A regular e-signature is a signature that is signed electronically using reliable methods capable of identifying the signatory as well as indicating the signatory's intentions pursuant to the electronic data. Examples of a regular e-signature are:

- Signing with a stylus
- Typing a name at the end of the email
- Attaching a scanned handwritten signature to an electronic document
- Clicking an 'accept' button on an electronic contract

- **Reliable e-signature**

A reliable e-signature is an e-signature where its creation data is solely linked to, and is under the control of the signatory. Any post-signing alteration of a reliable e-signature/electronic data is detectable. Examples of a reliable e-signature are:

- Using Public Key Infrastructure
- Using Public Key Infrastructure with a certificate from Certification Authority

### **III. Use of e-signatures in practice**

- Thai laws do not explicitly specify what transactions should use an e-signature and what type of e-signature should be used with. Therefore, whether to apply the e-signature or not and what type of e-signature to apply may depend on the purpose of such document/data and the level of reliability required, as well as the parties related to such document/data. Examples of the use of e-signatures are:
  - An execution of sale and purchase agreement by means of regular e-signature should be acceptable and binding between parties. Exceptions to this would be where both parties agree to sign either by wet signature or by a reliable e-signature.
  - A company can use an e-signature for transactions or registrations with government authorities in Thailand which accept the e-signature. These include:
    - The Revenue Department: e-Tax Invoice & e-Receipt
    - The Department of Foreign Trade: Certificate of Origin Issuance
    - Thai Customs: e-Customs
    - The Department of Business Development: e-Registration
- Transactions relating to family and succession laws are explicitly prohibited to be executed with an e-signature. This is in accordance with the **Royal Decree Prescribing Civil and Commercial Electronic Transactions Excluded from the Application of the Law on Electronic Transactions, B.E. 2549 (2006)**.

### **IV. Key legal effects of an e-signature**

Transactions executed with an e-signature have the same legal effects as a transaction executed with a wet signature; however, the burden of proof of the reliability may depend on each type of e-signature applied. Once the data is executed with an e-signature, it is considered electronic data with key legal effects/responsibilities as follows:

- It is forbidden to deny the binding and enforcement of the text simply because it is in the form of electronic data.
- The admissibility of electronic data as evidence shall not be denied in legal proceedings on the sole ground that it is in the form of electronic data.
- Where the law requires a transaction to be made in writing or to be evidenced in writing or supported by a document, if the transaction is created in the form of accessible electronic data which is reusable without changing its meaning it shall be deemed that such transaction is already made in writing or evidenced in writing or supported by a document.

### **How can KPMG Legal in Thailand assist you?**

- We can provide legal advice on e-signatures and appropriate procedures to comply with applicable laws.
- We can draft and/or review an agreement that contains a clause about e-signature.

- We can advocate to get you a reliable e-signature with a Certification Authority.

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