

(Draft)

The Electronic Commerce Act B.E.



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Whereas it is appropriate to promulgate a law regarding electronic commerce

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Section 1 This Act shall be titled “Electronic Commerce Act B.E.”.

Section 2 This Act shall come into force and effect from the date following its publication in the Government Gazette.

Section 3 This Act shall apply to all data messages used in any commercial activities, including those involving governmental operation.

Section 4 In this Act,

“Data Message” shall mean information generated, sent , received, stored or processed by electronic or optical means, or any means which functions in similar manner in generating, sending, receiving, storing or processing information, including electronic data interchange, electronic mail, telegram and telex;

“Commercial Activity” shall mean any activity arising from all relationships of a commercial nature, whether contractual or not, including, but not limited to, sale, exchange of goods or services, lease, hire purchase, employment,, carriage of goods or passengers,, lending, guarantee, agency, brokerage, factoring, leasing, licensing, investment, service, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business cooperation, except for those activities prescribed in a royal decree;

“Information System” shall mean a system, equipment or instrument for generating, sending, receiving, storing or processing data messages;

“Electronic Data Interchange” shall mean the electronic transfer from computer to computer of information using an agreed standard to structure the information;

“Originator” shall mean a person by whom, or on whose behalf, a data message purports to have been sent or generated prior to storage; the person may send or generate the data message by himself, or have the data message sent or generated in his name or on his behalf; it does not, however, include a person acting as an intermediary with respect to that data message;

“Addressee” shall mean a person who is intended by the originator to receive a data message, but does not include a person acting as an intermediary with respect to that data message;

“Intermediary” shall mean a person who, on behalf of another person, sends, receives or stores a data message, or provides services with respect to that data message, after the data message exits the information system of its originator and before it gets into the information system of the addressee.

Section 5 Subject to the provision of Section 6, where the law requires that an act shall be in writing, evidenced by a written document, or proved by a document, it shall be deemed that an act presented in a data message is in writing, evidenced by a written document, or proved by a document, in the meaning of the law, if the information contained in the data message is accessible so as to be usable for subsequent reference.

Section 6 Where the law requires a signature of the person who prepares the writing, written evidence or document, it shall be deemed that a data message contains such signature, if

- (1) a method is used to identify the person and to indicate that the person approves the content of such data message and endorses his authorship of the data message; and
- (2) the method is as reliable as was appropriate for the data message, at the time when it was generated or sent.

Section 7 It shall be presumed that a method as stated in Section 6 is reliable and appropriate, if the method is

- (1) agreed by the parties concerned, or
- (2) prescribed in a ministerial regulation.

Section 8 Where the law requires information to be presented or retained in its original form, that requirement is met by a data message if:

- (1) a reliable method is used to assure the integrity of the information from the time when it was first generated in its final form, and
- (2) when it is required that information be presented, that information is capable of being displayed.

The criteria for assessing the integrity of a data message shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display.

In assessing whether the method so used to assure the integrity of a data message is reliable, all circumstances including the purpose for which the data message was generated shall be taken into account.

Section 9 The admissibility as evidence of a data message shall not be denied on the sole ground that it is a data message.

In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which, or the method by which, the data message was generated, stored or communicated, to the manner in which, or the method by which, its originator was identified, and to any other relevant factor.

Section 10 where the law requires that certain documents or information be retained, that requirement is met by retaining data messages, provided that:

- (1) the information contained therein is accessible so as to be usable for subsequent reference;
- (2) that data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and
- (3) such information is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received.

The aforesaid obligation to retain documents or information does not extend to any information the sole purpose of which is to enable the message to be sent or received.

In retaining documents or information in accordance with this Section, the relevant governmental authority may prescribe any further regulation to fulfil the detail so long as such regulation does not conflict with the provisions of this Section.

Section 11 In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages.

Section 12 Unless otherwise agreed by the parties, a declaration of will or other statement may be expressed by means of data messages.

Section 13 A data message is that of the originator if it was sent by the originator itself.

As between the originator and the addressee, a data message shall be deemed that of the originator if it was sent by:

- (1) a person who had the authority to act on behalf of the originator in respect of that data message; or
- (2) an information system programmed by, or on behalf of, the originator to operate automatically.

Section 14 As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that presumption, if:

- (1) the addressee properly applied a procedure previously agreed to by the originator for the purpose of ascertaining whether the data message was that of the originator; or
- (2) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own; it shall be presumed that the data message resulted from the actions of such person in accordance with this sub-section, if the method which has been used by the originator to identify data messages as its own was applied to the data message.

The provisions of paragraph hereabove shall not apply:

- (a) as of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had

reasonable time to perform any necessary rectification with respect to that data message; or

- (b) in the case prescribed in (2) hereabove, at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.

Section 15 Where a data message is that of the originator or is deemed to be that of the originator according to Section 13, or the addressee is entitled to deem that a data message is that of the originator according to Section 14 paragraph one, as between the originator and the addressee, the addressee is entitled to regard the data message as received as being what the originator intended to send, and to act on that assumption, unless the addressee knew or should have known that the transmission resulted in error in the data message as received, had the addressee exercised reasonable care or used any agreed procedure.

Section 16 The addressee is entitled to regard each set of data messages received as a separate data message and to act on that assumption, except to the extent that it duplicates another data message and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

Section 17 Where, on or before sending a data message, by means of that data message, the originator has requested or has agreed with the addressee that receipt of the data message by the addressee be acknowledged, then the following rules shall apply:

- (1) where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by any communication by the addressee, automated or otherwise, or by any conduct of the addressee, sufficient to indicate to the originator that the data message has been received;
- (2) where the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received;
- (3) where the originator has not stated that the data message is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time:
 - (a) the originator may give notice to the addressee stating that no acknowledgement as been received and specifying a reasonable time by which the acknowledgement must be received, and
 - (b) if the acknowledgement is not received within the time specified in (a) hereabove, the originator may, upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights it may have.

Section 18 Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the related data message was received by the addressee. That presumption does not imply that the data message corresponds to the data message received.

Section 19 Where the received acknowledgement states that the related data message met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.

Section 20 Unless otherwise agreed between the originator and the addressee, the dispatch of a data message is deemed to occur when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.

Section 21 Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows:

- (1) if the addressee has designated an information system for the purpose of receiving data messages, receipt occurs:
 - (a) at the time when the data message enters the designated information system; or
 - (b) at the time when the data message is received by the addressee if the data message is sent to an information system of the addressee that is not the designated information system;
- (2) if the addressee has not designated an information system for the purpose of receiving data messages, receipt occurs at the time when the data message enters an information system of the addressee.

The provisions of this Section shall apply notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received by the addressee according to Section 22.

Section 22 Unless otherwise agreed between the originator and the addressee, a data message is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business.

For the purpose of the provisions of paragraph one hereabove,

- (1) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction, or where there is no underlying transaction, the principal place of business of the originator or the addressee, as the case may be;
- (2) if the originator or the addressee does not have a place of business, the place of dispatch or receipt of the data message shall be the habitual residence of the originator or the addressee, as the case may be.

The provisions of this Section shall not apply to the dispatch or receipt of a data message by means of telegram and telex.

Section 23 A governmental authority may provide that a commercial activity involving governmental operation may be conducted by means of a data message, provided that the data message conforms to the regulation and method prescribed in a ministerial regulation of such authority.

Section 24 The Minister of Commerce and the Minister of Justice shall be in charge of this Act, and shall be empowered to issue ministerial regulation to implement this Act.

Section 25 This Act shall apply to any data message generated, sent, received, stored or processed prior to the effective date of this Act.

Counter-signed

Prime Minister