

[Draft]

ELECTRONIC TRANSACTIONS ACT (NO. ..)

B.E. ....

-----

.....

.....

.....

.....  
.....

Whereas it is deemed expedient to amend the law on electronic transactions;

.....  
.....

**Section 1** This Act shall be called the “Electronic Transactions Act (No. ..) B.E.....

**Section 2** This Act shall come into force from the day following the date of its publication in the Government Gazette.

**Section 3** The definition of “Automated system for electronic data interchange<sup>1</sup>” shall be added in between the definition of “Information system” and “Electronic data interchange” to section 4 of the Electronic Transactions Act, B.E. 2544 (2001).

“ “Automated system for electronic data interchange” means a computer programme or an electronic or other automated means used to initiate an action or respond to data messages or to any performance to the information system, in whole or in part, without involvement by a natural person each time an action is initiated or a response is generated by the program or electronic or other means.”

**Section 4** The definition of “Secretary” and “Agency” shall be added in between the definition of “Commission” and “Minister” to section 4 of the Electronic Transactions Act, B.E. 2544 (2001).

“Secretary” means Secretary of Electronic Transactions Development Agency.”

“Agency” means Electronic Transactions Development Agency.”

---

<sup>1</sup> Or “Automated message system” under Australian and Singaporean laws

**Section 5** Paragraph one of section 8 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings:

“Section 8 Subject to the provision of Section 9, in the case where the law requires any transaction to be made in writing, evidenced in writing, or supported by a document which must be produced or where the law provides for certain legal effects in the event that such transaction is not made in writing, evidenced in writing or supported by a document, if the information is generated in the form of a data message which is accessible and admissible for subsequent reference, it shall be deemed that such information is made in writing, evidenced in writing or supported by a document.”

**Section 6** Section 9 of the Electronic Transactions Act, B.E. 2544 (2001) as amended by the Electronic Transactions Act, (No. 2) B.E. 2551 (2008) shall be repealed and replaced by the followings:

“Section 9 In the case where the law requires a signature, or provides for certain legal effects in the event that a document or a record is not signed, it shall be deemed that such signature is made if:

(1) the method used is capable of identifying the signatory and indicating that person’s intention in respect of the information contained in the data message; and

(2) the method used is either one of the following:

(a) a method that is reliable and appropriate to the purpose for which the data message was generated or communicated, having regard to all the circumstances, including any relevant agreement; or

(b) any method that can identify the signatory and indicate that person’s intention as described in (1), by itself or together with other evidence.

The reliable method under Paragraph one (2) (a) shall have regard to:

(1) security and safety in the use of procedure or equipment for the identification of persons, readiness of the alternatives for the identification of persons, rules on signature as prescribed by law, level of security and safety in the use of electronic signature, compliance to the procedures for identification of persons acting as the intermediary, level of acceptability or unacceptability, procedures for the identification of persons in the making of transactions, procedures for the identification of persons at the time of transaction or communication;

(2) characteristics, category or size of the transactions made, number of times or regularity of transactions, trade customs or practices, significance or value of the transactions made; or

(3) safety of communication system.

The provisions of paragraph one shall apply *mutatis mutandis* to the affix of seal of a juristic person through electronic means.”

**Section 7** Paragraph one (1) of section 12 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings:

“ (1) that data message is accessible and admissible for subsequent reference.”

**Section 8** The followings shall be added as section 13/1 of the Electronic Transactions Act, B.E. 2544 (2001):

“Section 13/1 In the making of an offer through electronic communications, whether made once or multiple times, which is not addressed to any specific person, but is generally accessible by persons using the information system, including an offer that allows automatic responses by the information system, the making of instructions through such information system shall be deemed an invitation to treat, unless the offer clearly indicates the intention of the offeror to be bound in case of acceptance.”

**Section 9** The followings shall be added as section 13/2 of the Electronic Transactions Act, B.E. 2544 (2001):

“Section 13/2 A contract formed by the responses between an automated system for electronic data interchange and a natural person, or by the responses between automated systems for electronic data interchange, shall not be denied validity or enforceability solely on the grounds that no natural person is involved in each of the individual action carried out by the automated systems for electronic data interchange or in the resulting contract.”

**Section 10** Paragraph one (1) of section 16 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings:

“(1) the addressee has properly applied the procedure that the originator has agreed on or bound themselves to verify whether the data message was that of the originator; or”

**Section 11** The followings shall be added as section 17/1 of the Electronic Transactions Act, B.E. 2544 (2001):

“Section 17/1 In the case where a natural person makes an input error that is sent through the automated system for electronic data interchange of another and that automated system for electronic data interchange does not provide the person with a channel to correct the error, that person or that person’s agent shall be entitled to withdraw the intention of the portion in which the input error was made, if;

(1) that person or that person’s agent notifies the other party of the error as soon as possible after becoming aware of the error and shows such error has been sent through the automated system for electronic data interchange; and

(2) that person or that person’s agent has not used or received any substantial benefit acquired from said error.”

**Section 12** Paragraph one (4) of section 26 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings;

“(4) where a purpose of the legal requirement for a signature is to provide assurance as to the completeness and integrity of the information, and any alteration made to that information after the time of signing is detectable.”<sup>2</sup>

---

<sup>2</sup> This amendment is actually identical to the old version (ETA B.E.2544), word by word.

**Section 13** Paragraph three of section 32 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings;

“For this purpose, Electronic Transactions Development Agency is designated as the responsible supervisory agency except where any other government agency is designated by a Royal Decree to be the responsible supervisory agency.”

**Section 14** Section 33 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings;

“Section 33 In the case where there is a Royal Decree prescribing the service business relating to electronic transactions which shall be subject to prior notification, the person wishing to operate such business shall notify the competent official of Electronic Transactions Development Agency or as prescribed in the Royal Decree prior to the commencement of such business operation. The Royal Decree therefore shall prescribe the rules, procedures and conditions.

When the competent official of Electronic Transactions Development Agency or official prescribed by the Royal Decree is notified, the competent official shall issue a certificate of notification as dated evidence of such notification. And the person making notification can operate such business as from the date of the notification. If, subsequently, the competent official finds that the notification has been made inaccurately or incompletely, he or she shall have the power to order the person having made the notification to correct or complete it within seven days from the receipt date of such order.

In operating the business, the person having made the notification shall comply with the rules prescribed in the Royal Decree and those prescribed by the Commission.

If the person having made the notification fails to comply with the competent official's order to correct or complete the notification under paragraph two, or violates or fails to comply with the rules for business operation under paragraph three, the Commission shall consider and issue an order imposing an administrative fine not exceeding one million Baht, taking into account the severity of the offence and, in case where it deems fit, the Commission may issue an order requiring such person to take any corrective action as appropriate.

The rules used for determination to impose an administrative fine shall be prescribed by the Commission. If the person subject to administrative fine fails to make payment, the provisions relating to the administrative execution under the law on administrative procedure shall apply *mutatis mutandis*. In case where there is no official to proceed with the execution in accordance with such order, the Commission shall be empowered to bring a lawsuit before the Administrative Court to enforce payment of the fine. In this connection, if the Administrative Court has a view that the order imposing the fine is lawful, the Administrative Court shall be empowered to try and adjudicate the case and order the seizure or attachment of the property for sale by auction to pay for the fine.

In case where the person committing the offence under paragraph four fails make correction in accordance with the order of the Commission or repeats the offence, the Commission shall be empowered to issue an order prohibiting such person from further operating the business as notified.”

**Section 15** The followings shall be added as section 33/1 of the Electronic Transactions Act, B.E. 2544 (2001):

“Section 33/1 In the case where there is a Royal Decree prescribing the service business relating to electronic transactions which shall be subject to registration, the person wishing to operate such business shall apply for the registration with the competent official of Electronic Transactions Development Agency or as prescribed in the Royal Decree prior to the commencement of such business operation. The Royal Decree therefore shall prescribe the rules, procedures and conditions.

When the competent official of Electronic Transactions Development Agency or official prescribed by the Royal Decree registers the application, the competent official shall issue a certificate of application for registration as dated evidence of such registration. If the competent official finds the registration documents and evidence as complete and correct in accordance with the Royal Decree, he or she shall proceed with the registration and notify the person applying for registration within thirty days from the receipt date of the application. And the person applying for registration can operate such business as from the notified date of the registration.

In the case where competent official examines in prior the registration, in accordance with paragraph two, or subsequently finds that the registration documents and evidence as incomplete or incorrect, he or she shall notify the person applying for registration, or the registrant in certain case, to correct and complete the application within specific period of time. In the connection, if the person applying for the registration or the registrant fails to correct or complete the application or fails to comply within the period indicated by the competent official, the application for registration shall be voided, or the competent official shall be empowered to report to the Commission in order to revoke that registrant’s registration.

The provisions of paragraph three, paragraph four, paragraph five and paragraph six of section 33 shall apply *mutatis mutandis* to the operation of business relating to electronic transactions which is subject to registration”

**Section 16** The followings shall be added as section 34/1 of Chapter III Service business relating to electronic transactions of the Electronic Transactions Act, B.E. 2544 (2001):

“Section 34/1 For the purpose of controlling and supervising the service business relating to electronic transactions in accordance with this Act or any Royal Decree issued under section 32 of this Act, the competent official is empowered to:

(1) notify, in writing, the service provider or its employee or any person to provide information or to produce documents or any evidences relating to such service business.

(2) examine and collect facts to report to the Commission, in the case where the service provider has infringed, caused damages due to such violation of law, or failed to comply with this Act or relating Royal Decree or the notification of the Commission.

To secure compliance with (2), if necessity arises in order to protect service user’s interest or public interest, the competent official is empowered to enter the place of such service business relating to electronic transaction during sunrise and sunset or during the operating hours of that place of business. The official thus examines and

collects facts and order the seizure or attachment of documents and evidences, including any other suspicious items in possession or in use regarding alleged service.

In the interest of the competent official's performance of duty, any party involved shall facilitate such performance of duty as appropriate.”

**Section 17** The followings shall be added as paragraph three of section 35 of the Electronic Transactions Act, B.E. 2544 (2001):

“The provisions of paragraph one shall apply to the procedure of application, permission, registration, administrative orders, payment, notifications or any actions under the law of court or independent agencies under the Constitution.”

**Section 18** Section 36 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings;

“Section 36 There shall be the “Electronic Transaction Commission” which consists of:

(1) Chairperson, appointed by the Council of Ministers in consideration of knowledge, expertise and profound experience on information and communications technology, management or other relating fields that benefit the performance of the Commission;

(2) The Permanent Secretary of the Ministry of Digital Economy and Society of as an *Ex officio* member

(3) Qualified members, no less than five and no more than eight qualified members appointed by the Council of Ministers in consideration of their knowledge, expertise and notable competency in the fields of electronic commerce, law, computer science, science or engineering, social science or other fields that benefit the performance of the Commission. More than half of qualified members must not be governmental officials or fixed-term governmental employees.

The rules and procedures in selecting and nominating the Chairperson and qualified members must be in accordance with the rules prescribed by the Minister.

The Secretary of Electronic Transactions Development Agency shall be member and secretary *ex officio* and shall appoint assistant secretaries as deemed necessary.”

**Section 19** Section 37 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed and replaced by the followings;

“Section 37 The Electronic Transaction Commission shall have the following powers and duties:

(1) To make recommendation to the Commission of Digital Economy and Society to lay down policies for development and promotion of electronic transactions in compliance with national policies and plan for digital technology for Economy and Society, including proposing solving measures to relevant problems, risks or other obstacles that affect electronic transaction;

(2) To promote and encourage government agencies, private sectors and individuals to act in compliance with the policies and plan under (1), including making the performance evaluation report for the Commission of Digital Economy and Society;

(3) To make recommendation to the Commission of Digital Economy and Society and the Council of Ministers to issue or improve the laws relating to electronic transactions;

(4) To make recommendation or advise the Minister to issue Royal Decrees pursuant to this Act;

(5) To issue rules or notifications in compliance with this Act or for promotion and development of electronic transactions;

(6) To supervise and control the Agency to act in compliance with the indicated objectives;

(7) To monitor and supervise the operation of service business relating electronic transactions under this Act;

(8) To set the standard for Information and Communications Technology relevant to electronic transactions;

(9) To arrange conferences between the Commission and government agencies or between government agencies themselves for the purpose of the efficient performance of duties under national policies and plan for digital economy and society;

(10) To require the clarification of facts, the verbal statement or the production of document from any government agency or any person for the purposes of the execution of duties;

(11) To orchestrate the monetary, fiscal, and investment policies and directions, the measures on material acquisition and government procurement, to lessen problematic regulations that have perplexed and hindered the progress of digital economy and society as a whole in order to facilitate and expedite the execution of duties in both public and private sectors;

(12) To designate the criteria for approval of public private partnership projects in government businesses relating to digital economy and society, as well as supervising and monitoring the execution of such projects;

(13) To perform any other act for the purposes of the execution of this Act or other laws.

In case where the execution of duties under (11) and (12) complies with the indicated criteria and methods under the regulation issued by the Commission, there shall be no need to comply with the law on supply and procurement and the law on public private partnership.

In performing acts under this Act, the Commission shall be deemed to be a competent official for the purpose of the Penal Code.

**Section 20** The followings shall be added as paragraph three section 38 of the Electronic Transactions Act, B.E. 2544 (2001):

“In case where a qualified member vacates the office after the expiration of the term of office under paragraph one of this section, the retired member shall remain in office until the vacancy is filled by the appointment of a new qualified member.”

**Section 21** The followings shall be added as paragraph four section 41 of the Electronic Transactions Act, B.E. 2544 (2001):

“The Commission’s meetings can be proceeded via electronic means or other means as specified by the Commission.”

**Section 22** Section 43 of the Electronic Transactions Act, B.E. 2544 (2001) shall be repealed.

**Section 23** The followings shall be added as Chapter 5/1 The Office of Electronic Transactions Commission section 43/1 to section 43/27 of the Electronic Transactions Act, B.E. 2544 (2001):

### **“Chapter 5/1**

#### **Electronic Transactions Development Agency**

-----

Section 43/1 There shall be the “Electronic Transaction Development Agency”, abbreviated to “ETDA”, which shall be deemed as a government agency and a juristic person. The Agency shall not be deemed as a public sector under the law on public administration or as a state enterprise under the law on budget procedures or other laws.

The Agency’s execution of performance shall not be enforced by the Labour Protection law, Labour Relations law, law on labour relations in state enterprise, law on social security and law on compensation. The Agency’s officials and employees nevertheless shall not be remunerated less than the indicated amount under the Labour Protection law, law on social security and law on compensation.

Section 43/2 The Agency shall operate for the purposes of the development, encouragement and promotion of national electronic transactions through the construction of primary information base to support electronic transactions, service business relating to electronic transactions and electronic transactions in public sectors. The Agency shall thus act accordingly to advance Digital Economy and Society policy.

Section 43/3 For the purposes of achieving Agency’s objectives under section 43/2, the Agency shall have the following powers and duties;

(1) To make recommendation to the Commission on strategies relating to Agency’s objectives, including promoting and advising the execution plan to relevant agencies;

(2) To coordinate with government agencies and private sectors to ensure their compliances with the laws relating to the Agency’s mission, policies, national plans, or execution plans under Agency’s responsibility, including monitoring and evaluating the performance in order to make recommendation to the Commission on solutions of any existing problems;



(3) To advise or set the standard or measures relating to electronic transactions;

(4) To supervise and control service business, to take into consideration any complaint or administrative complaint, to analyse, examine or certify compliance to the standards and quality of products, or to certify of the qualifications of any personnel relating electronic transactions or other relating fields as specified by law as Agency's duties;

(5) To study, research and develop information technologies for the purposes of supporting electronic transactions or Agency's mission related;

(6) To provide academic services or any service related to the Agency's mission to government agencies, private sectors and citizen as well as to publicise knowledge of relating fields, create awareness and offer training for relating skills;

(7) To make recommendation to the Commission to amend laws, rules and regulations relating to Agency's missions;

(8) To make agreements and cooperate with both domestic and international organisations, government agencies and private sectors on the achievement of the Agency's objectives;

(9) To perform duties as the secretary office to the Commission;

(10) To perform any other act as entrusted by the Prime Minister or the Council of Ministers or the law.

Section 43/4 For the purposes of achieving Agency's objectives in section 43/2 and 43/3, the Agency shall have following powers and duties;

(1) To hold ownership, possessory rights and proprietary rights;

(2) To create rights or engage in any juristic act concerning assets including engaging in other juristic act for the purposes of the Agency's performance;

(3) To provide funding for the purposes of supporting the Agency's performance;

(4) To hold shares, enter into partnership or co-invest with other juristic person in any business relating to the Agency's objectives;

(5) To incur debts for the purposes of achieving the Agency's objectives;

(6) To charge for fees, honorarium, remuneration or service compensation for any execution of duties in the purposes of the Agency's objectives. In this connection, the Agency shall specify the criteria and rates;

(7) To perform any other act for the purposes of the achievement of Agency's objectives;

(8) To perform any other act for the purposes of the execution of this Act or as entrusted by the Commission.

In the case where the co-investment is proceeded under (4) in compliance with the criteria and approaches indicated in the regulation issued by the Commission, there shall be no need to comply with the law on public private partnership.

Section 43/5 The Agency shall be a government agency under the law on liability for wrongful act of official.

Section 43/6 The Minister may appoint Agency's official as a competent official under the law on electronic transactions.

Section 43/7 The Agency shall financially earn from the following sources;

- (1) Initial capital fund allocated from the government;
- (2) Transferred capital and assets;
- (3) Annual subsidy granted by the government as deemed appropriate
- (4) Financial aids from private sectors or other organisations, including foreign countries or international organisation and monetary or material donation;
- (5) Fruits and benefits or other income resulting from the Agency's execution of duties;
- (6) Money and other asset in possession of the fund.

The Agency's assets shall not be enforced under the law of legal execution and administrative enforcement.

In the case where the Agency's expenditure exceeds its revenue and alternative funds cannot be obtained, the government shall financially allocate funds to the Agency as necessary and appropriate.

Section 43/8 The Agency's revenues shall not be submitted to National Treasury.

Section 43/9 For the purposes of achieving Agency's objectives and duties, the Agency shall have powers and duties to monitor and supervise its business and execution of performance and also to do all or any of the followings;

- (1) To take into consideration and give approval on execution plan and general management, including the performance evaluation of the Secretary;
- (2) To monitor and supervise the operation and general administration, including issuing rules, regulations, notifications or requirements relating to the Agency on the following matters;
  - (a) The general management of the delegation office of the Agency and its scope of power and duties;
  - (b) The management and allocation of Agency's capitals, materials and assets, including the accounting and the disposal of asset with no salvage value;
  - (c) The positions, qualifications of each position, salary rate, wages and other remunerations for officials and employees;

(d) The selection, hire, appointment, promotion of salary or wages, dismissal, disciplines, disciplinary procedures, disciplinary actions, appeals and complaints of officials and employees, general human resources management, including the approaches and conditions of employee hire;

(e) The nomination of the Secretary, the Secretary's execution of duties and the acting Secretary or deputy Secretary;

(f) The uniform and dress codes for Agency's officials and employees;

(g) The appointment of experts or specialist in specific fields in benefits of The Commission's performance, including their rate of remuneration;

(h) Welfares and benefits for officials and employees;

(i) The Scope of power, duties and execution of duties of internal auditor and the rules on the disposal of asset with no salvage value under (2)(b) shall comply with the criteria appointed by the Council of Ministers;

(3) To Supervise and control the financial statement, annual reports or other Agency's reports indicated in this Act.

Section 43/10 There shall be one Secretary in the Agency.

The Commission shall be empowered to recruit, appoint or discharge the Secretary.

In the case where the position is vacant or the Secretary is unable to perform duties, the vice-Secretary with highest seniority shall be entitled to act on behalf of Secretary. In the absence of vice-Secretary, the Commission shall appoint one member as the acting Secretary.

Section 43/11 The Secretary shall have qualifications and not be under the prohibitions, as follows;

(1) being of Thai nationality;

(2) being able to work full-time for the Agency;

(3) being not more than sixty five years of age;

(4) having knowledge, competence and experience in the fields relating to The Agency's mission and administration;

(5) being not bankrupt nor having been dishonestly bankrupt;

(6) being not an incompetent nor quasi-incompetent;

(7) having never been sentenced by a final judgement to imprisonment, except an offence committed through negligence or a petty offence;

(8) having never been expelled, dismissed or removed from the official service, a State agency, a State enterprise or a private agency on the grounds of dishonest performance of duties or deemed as having committed dishonest acts and malfeasance in the official service;

(9) having never been removed from an *ex officio* position<sup>3</sup>;

(10) being not a person holding political position, a member of local assembly or local administrator, a director of or a person holding any position responsible for the administration of a political party or an advisor or official of a political party;

(11) being not a person in the business relating to the Agency or having a business that directly or indirectly conflicts with the Agency's objectives except the person appointed by the Commission as president, director or Agency's representative in the investment with other juristic person under section 43/4 (4).

Section 43/12 The Secretary shall hold office for a term of four years and may be reappointed, but may not be appointed for more than two consecutive terms.

The Agency shall appoint the nomination committee to appoint a person to replace the vacated Secretary position at least thirty days but not exceeding sixty days before the expiration of the term or within thirty days after the vacancy in the case where the Secretary vacates the office before term.

Section 43/13 The performance evaluation and the period of performance evaluation of the Secretary shall proceed as prescribed by the Commission.

Section 43/14 In addition to vacating office on the expiration term under section 43/12, the Secretary vacates office upon;

(1) death;

(2) resignation;

(3) being removed by the Commission due to underperformance upon evaluation, negligence in the performance of duty, disgraceful behaviour or inefficiency;

(4) being sentenced by a final judgement to imprisonment

(5) being disqualified or under any of the prohibitions under section 43/11.

Section 43/15 The Secretary shall have the following powers and duties;

(1) To administer the Agency in the purposes of the Agency's mission and in compliance of national plans and policies, The Council of Ministers and The Commission policies and The Commission's rules, regulations and resolutions;

(2) To manage the Agency's execution of performance in compliance with the law, the Council of Minister's resolutions, and rules, regulations, requirements, policies, resolutions or notification prescribed by the Commission;

(3) To supervise every official and employee, except for the person who performs the internal audit and the performance evaluation of the official and employee as prescribed by the Agency's rules or regulations;

---

<sup>3</sup> The original in Thai is rather vague.

(4) To appoint vice director or assistant director, with the approval of the Commission, to assist the director upon his or her assignment;

(5) To hire, appoint, promote, demote, reduce or cut in salary or wage, take disciplinary action on officials and employees, including dismissing officials and employees, as prescribed by the Agency's rules or regulations;

(6) To perform any other act in compliance with the Commission's rules, regulations and resolutions.

Section 43/16 The Secretary shall act as a representative of the Agency in any business relating to external affairs. In this connection, the Secretary may authorise any person to perform certain act on his or her behalf under the rules and regulations prescribed by the Commission.

Any juristic act wrongfully committed, in violation of the Commission's rules or regulations, by the Secretary or the person acting on Secretary's behalf shall not obligate the Agency, except the case where the Commission confirms such juristic act.

Section 43/17 The Commission shall specify the rate of the Secretary's salary and other compensations in compliance with the criteria prescribed by the Council of Ministers.

Section 43/18 The Agency's personnel shall be categorised into 3 groups;

(1) an official or an employee is a person who is remunerated by salary or wage from the Agency's budget;

(2) an advisor or an expert is a person specially hired by the Agency with employment contract to perform as advisor or expert;

(3) a governmental official who temporarily works for the Agency under section 43/21

Section 43/19 The official and employee shall have qualifications and not be under the prohibitions, as follows;

(1) being of Thai nationality;

(2) being not less than eighteen years of age nor more than sixty years of age;

(3) being able to work full-time for the Agency;

(4) having qualification and experience appropriate for The Agency's mission, power and duties;

(5) being not a government official, employee or staff of public sector, employee or staff of a State Enterprise or other State agency or employee or staff of a local government organisation;

(6) being not an advisor or expert with employment contract with the Agency;

(7) being not under the prohibitions under section 43/11 (5) (6) (7) (10) or (11)

The provision under (1) shall not enforce on foreign official or foreign employee whom the Agency is obliged to hire or appoint for the purposes of the Agency's nature of operation.

Section 43/20 The official and employee shall vacate the position upon;

(1) death;

(2) resignation;

(3) being disqualified or under any of the prohibitions under section

(4) being removed due to underperformance upon evaluation under the criteria and approaches prescribed by the Commission's rules and regulations;

(5) being dismissed or discharged due to disciplinary violation under the criteria and approaches prescribed by the Commission's rules and regulations.

Section 43/21 For the purposes of the Agency's execution of performance, the Secretary may request civil servant, official or other operational staff from a Ministry, a Department, a local government organisation, a State Enterprise, other public organisation, or other government agency to operate as temporary staff or employee. In this connection, this request shall only be fulfilled upon the approval of the superior or employer of such person and the approval of mutual agreement.

In the case where government official is allowed to operate as temporary staff or employee under paragraph one, such government official shall be deemed as rightfully absent from official position for other duties and his or her period of work shall be calculated for pension or other similar benefits as if such government official has worked for the government or has operated full-time.

Upon the expiration of designated period of personnel loan, such government official under paragraph one shall be entitled to be hired and appointed at the old government function or old agency for the position and salary not lower than in the mutual agreement.

Section 43/22 The Agency shall establish and maintain correct accounting system; categorised by important genre, keeping an accounting book listed by debit, credit, assets and debts by the fact and propriety, categorised by work genre, including the resources of each entry.

Section 43/23 The Agency shall arrange the balance sheet, financial statement and operational accounting for the internal auditor within one hundred twenty days from the fiscal year-end.

Section 43/24 The Office of the Auditor General of Thailand or an external auditor, appointed by the Commission with the approval of the Office of the Auditor General of Thailand, shall audit and evaluate the Agency's expenditure and assets once a year. The auditor shall provide analytical opinions on the goal-orientation, economy and efficiency of such expenditure and shall report the audit to The Commission.

Section 43/25 The auditor shall have duties to examine the Agency's accounting books, documents and other evidences. In this connection, the auditor shall

have powers to interrogate the Secretary, officials and employees and to requisition further accounting books, documents and other evidences as deemed necessary.

Section 43/26 The auditor shall arrange and present an audit report with opinions on the financial statement to the Commission for approval within one hundred fifty days from the fiscal year-end.

Section 43/27 The Agency shall arrange and present an annual operation report to the Commission and the Minister within one hundred eighty days from the fiscal year-end and publish this report to the public.

Such report under paragraph one shall provide, in detail, the financial statement with the auditor's opinion, including the performance and performance evaluation report of the past year.

The Agency's performance evaluation under paragraph two shall be conducted by an external audit, appointed with approval of the Commission.

Section 43/28 The Minister shall have powers to monitor and supervise the Agency's performance to comply with its duties and the laws, government policies and relating resolutions of the Council of Ministers. In this connection, the Minister shall have powers to require, from the Secretary, a clarification, an opinion or a report and also to restrain the Agency from executing any act against its scope of power and duties, government policies or relating resolutions of the Council of Ministers, including the power to open a fact-finding investigation on the Agency's performance."

### Temporary Provision

-----

**Section 24** In a preliminary, the president and qualified members of the Commission of the Electronic Transaction Development Agency, under the Act Establishing Electronic Transaction Development Agency (public organisation) B.E. 2554, shall be the president and the qualified members of the Commission and perform the duties prescribed by this Act until the nomination and appointment of qualified members under this Act is completed, within one hundred twenty days from the date this Act comes into force.

**Section 25** In a preliminary, the acting director of the Electronic Transaction Development Agency (public organisation), under the Act Establishing Electronic Transaction Development Agency (public organisation) B.E. 2554, shall act as the Secretary until the nomination and appointment of the Secretary under this Act is completed.

**Section 26** In a preliminary period before being granted annual governmental budget, the Secretary shall present the Commission's execution of duties plan and the Agency's administrative establishment plan to the Council of Ministers for subsidy in the purposes of achieving such execution and administration plans.

The Council of Ministers shall consider and allocate the budget into general subsidy for achieving such plans proposed by the Secretary as deemed necessary.

**Section 27** The business, assets, rights, duties, obligations, officials and employees and budget of the Electronic Transaction Development Agency (public organisation), under the Act Establishing Electronic Transaction Development Agency (public organisation) B.E. 2554, shall be transferred to the Agency under this Act.

**Section 28** The powers, duties, business, assets, rights, obligations and budget of the office of the Electronic Transaction Commission under the office of the permanent secretary for the Ministry of Information and Communication Technology, shall be transferred to the Agency under this Act.

In the case where any civil servant or employee of the office of the Electronic Transaction Commission under the office of the permanent secretary for the Ministry of Information and Communication Technology, whose performance relates to the business transferred in paragraph one, volunteers to be the Agency's official or employee, that person shall present his or her intention, in writing, to the supervisor within ninety days after this Act comes into force. After passing selection and evaluation procedures appointed by the Agency, the Agency shall accept such person as an official or an employee of the Agency.

The civil servant, who leaves the public service in order to be the Agency's official under paragraph two, shall be deemed as being removed from public service due to the abrogation or the dissolution of such position under the law on civil servant's pension and retirement benefit or the law on civil servant's pension and retirement benefit fund.

The employee, who becomes the Agency's official under paragraph two, shall be deemed as being removed from employment due to the abrogation or the dissolution of such position or the termination without cause and shall be granted benefits under the Ministry of Finance's rules on employee's benefit.

**Section 29** The Prime Minister shall have charge and control of the execution of this Act.

Countersigned by:

-----

Prime Minister