

Draft
Royal Decree
Regulating of Electronic Payment Services B.E. ...

.....
.....
.....
.....
.....

Where-as it is expedient to prescribe the service business relating to electronic transaction which shall be subjected to prior notification, registration or license shall be issued;

Be it, therefore, by virtue of section 221 of the Constitution of the Kingdom of Thailand in conjunction with section 32 paragraph one, section 33 and 34 of the Electronic Transaction Act B.E. 2544, containing certain provisions in relation to the restriction of the rights and liberties of person, in respect of which section 29, in conjunction with section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law, His Majesty the King promulgates the following Royal Decree as follows.

Section 1. This Royal Decree shall be called the ‘Royal Decree on Regulating Electronic Payment Business B.E. ...’.

Section 2. This Royal Decree shall come into force after one hundred and twenty days as from the date of its publication in the Government Gazette.

Section 3. This Royal Decree shall apply to all services constituting electronic payment.

The provision of paragraph one shall apply to all branches or agents of service provider located abroad.

Section 4. In this Royal Decree:

‘Electronic Payment’ means the transfer of right to possess money or the transfer of right to withdraw or debit from the depositing account of the customer , opened with the service provider, by electronic means in whole or in part;

‘Credit Card Network’ means a network of services for transmitting the information of electronic payment via the credit card of the holder to the service provider who is the card issuer in order to approve each transaction or transmitting the information of collecting money resulting from electronic payment, including the balance striking;

‘EDC’ (Electronic Data Capture: EDC) means the instruments or tools receiving any information from credit card, debit card, e-Money or other electronic cards, which is subjected to transmitting the information of electronic payment to the service provider who is the card issuer in order to approve a transaction upon the card;

‘EDC Network’ means the network of dispatch or receipt the EDC information that has a center or linkage for transmitting information among the service user of network;

‘e-Money’ means electronic card issued by the service provider for the service user, whose name may be specified or not specified. The service user shall pay money in advance to the service provider and use such e-Money in the payment of goods, services, expenses or others payment instead of payment in cash and money paid to the service provider shall be recorded in advance;

‘Electronic Card’ means Electronic Card in accordance with the Penal Code;

‘Transaction Switching’ means the service of being a center or linkage for transmission of information regarding electronic payment record to the service provider as agreed;

‘Payment Service Provider’ means the service of collecting money by electronic means in whole or in part on behalf of the creditor for the goods, services, expenses or other debts of the payer. As an agency of such payment, the service provider shall oblige to keep the value or the amount of the payment received in order to transfer to the creditor punctually upon agreement between the service provider and the creditor in accordance with the purpose of the payer;

‘Clearing’ means the service of transmitting, examining and confirming the information, deriving from the payment instruction, for calculating net clearing position in order to settle the balance of the creditor or the debtor, including the arrangement to complete the settlement process;

‘Settlement’ means the service of payment as previously agreed between the creditor and at least two debtors who expressly intent to pay or collect money. The service provider will debit money from the deposit account or receive payment by other means as agreed and then deposit such money to the account of the creditor or pay back to the creditor by other means for extinction of obligation;

‘Service Provider’ means a service provider as prescribed in List A, B or C attached to this Royal Decree;

‘BOT’ means the Bank of Thailand by virtue of the Bank of Thailand Act B.E. 2485;

‘Commission’ means the Electronic Transaction Commission.

Section 5: The BOT shall have charge and control of the execution of this Royal Decree.

Section 6: Unless the provisions of this Royal Decree otherwise requires, the prescription of additional rules, procedures and conditions for undertaking electronic payment business being subjected to prior notification, registration or license by virtue of Section 32 of the Electronic Transactions Act B.E.2544 shall be in accordance with the notification of the Bank of Thailand with the approval of the Commission. In granting license under this Royal Decree, the Bank of Thailand shall publicly prescribe the period of consideration or making order. In the case where the license is not granted, the reason shall be notified to the applicant.

Section 7: Any person appointed by the BOT shall be the competent officer under this Royal Decree.

CHAPTER 1

Electronic Payment Services

Section 8: The service provider as prescribed in the List A annexed to this Royal Decree shall be required notification prior to the commencement of such business operation.

Section 9: The service provider as prescribed in the List B annexed to this Royal Decree shall be required registration prior to the commencement of such business operation.

Section 10: The service provider as prescribed in the List C annexed to this Royal Decree shall be required the license prior to the commencement of such business operation.

Section 11: Any amendment of the types of business specified in the Lists annexed to this Royal Decree from List C to List B or List B to List A shall be in accordance with the notifications of the Bank of Thailand.

In the case of doubt whether a type of business shall be classified into List A or List B or List C annexed to this Royal Decree, the Commission shall have the power to make a decision.

Section 12: An applicant for the license shall be the limited company or the limited public company having paid up capital not less than the amount prescribed by the BOT.

Section 13: The director or the officer having power of management of the service provider applying for the license shall not have the following disqualifications;

(1) Being declared bankrupt or having been discharged from being declared bankrupt for less than two years from the date of the court order for terminating or discharging of the bankruptcy;

(2) Having been imprisoned by a final court judgment for an offence relating to counterfeiting and alteration, a fraudulent offence relating to property or an offence relating to computer;

(3) Having been a director or the officer having power of management of the juristic person whose license to operate services under this Royal Decree has been withdrawn;

(4) Having other disqualifications as prescribed by the Bank of Thailand with the approval of the Commission.

CHAPTER 2

Rules and Procedures on Submitting the Form of Notification and Registration

Section 14: In case of the notification and registration, as the case may be, the service provider shall be required to submit the application to the Bank of Thailand in the form, together with the evidences, as prescribed by the Bank of Thailand.

Section 15: In case of the notification and registration, if the service provider is a natural person, the application in the prescribed form together with the following evidences shall be required;

- (1) A copy of identification card or a copy of census;
- (2) A copy of taxpayer identification in the case where the service provider is a non-juristic body of person;
- (3) A clarification letter together with evidences presenting the capital for undertaking business;
- (4) Other evidences as prescribed by the Bank of Thailand.

Section 16: In case of the notification and registration, if the service provider is a juristic person, the application in the prescribed form, a certificate document of juristic person together with the evidences prescribed by the Bank of Thailand shall be required.

Section 17: In case of having made the notification, the service provider shall submit a contingency plan or a back-up system for continuously providing the service and a policy and standard for the security of information technology system having standard not less than as stipulated by the Bank of Thailand.

Section 18: In the consideration of the application for the registration in this Royal Decree, the service provider shall be required to submit the application in accordance with the rules, conditions and procedures as prescribed by the Bank of Thailand in which at least consists of the following lists:

- (1) a policy or plan for undertaking payment service business;
- (2) an operation plan for undertaking payment service business;
- (3) an administration and risk management system;
- (4) an internal control system;
- (5) a policy and security standard of information technology system;
- (6) the possibility study and the risk assessment for providing service including an contingency plan.

Section 19: If the Bank of Thailand has later discovered that the notification or registration has been made incorrectly or incompletely, it shall order the person having made the notification or applied for the registration to make the correction within seven days from the date of receiving the order.

If the person having made the notification or applied for the registration under paragraph one does not rectify the notification or registration to be correct or

complete or violates or fails to comply with the rules for business operation, the Bank of Thailand shall consider and submit the case to the Commission. 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.

In the case where the person having made the notification or applied for the registration fails to make the 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 or registered. Such order shall be subjected to the public announcement.

CHAPTER 3

Rules and Procedures for submitting application for the license

Section 20: The provision of Chapter 2 shall be applied to the rules and procedures of submitting application for the license *mutatis mutandis*.

Section 21: In case of applying for the license, the application in the prescribed form, a certificate document of juristic person together with the evidences as prescribed by the Bank of Thailand shall be required.

CHAPTER 4

The Rules for Undertaking Business

Section 22: Besides complying with section 17, section 18 and section 20, Service Provider shall comply with the rules prescribed in the notification of the Bank of Thailand.

The notification of the Bank of Thailand under paragraph one shall at least contain the following particulars:

- (1) The custody and the disclosure of personal information of the customer;
- (2) The examining and maintaining the security of the system for consistent reliability;
- (3) The express prescribing of any fee for provided service;
- (4) The receiving of complaint in case there is any complaint or dispute from the customer and the process for ratifying such complaint or dispute;
- (5) The accounting and reporting

Other than the rules prescribed in paragraph two, the Bank of Thailand may prescribe additionally significant rule varying to the type of business as the case may be as follows;

- (1) the issuing of evidence for payment;
- (2) the keeping for money which will be send;
- (3) the prescribing of finality of money transferred which may be unconditionally and promptly utilized by the beneficiary;

(4) the process for maintaining financial status of service provider; or
 (5) the arrangement of independent auditor for security as in the list prescribed by the Commission.

Section 23: Service Provider shall submit balance sheet and report regarding its performance to the Bank of Thailand as prescribed by the Bank of Thailand

CHAPTER 5

Supervision

Section 24: In order to comply with this Royal Decree, the competent officer shall have power to;

- (1) order service provider to testify or to deliver copies of any documents;
- (2) examine and collect information and, then, report to the Commission in case where service provider violates the law or cause damage because of failing to comply with the Royal Decree or the condition for undertaking service.

CHAPTER 6

The renewal, suspension and license revocation

Section 25: The license granted to service provider shall have effective for ten years and can be renewed for a term of ten years.

Within one hundred and twenty days but not less than sixty days prior the due date of the license, in case where service provider wish to undertake servicing business, such service provider shall submit the application for the renewal. When service provider has applied for the renewal, it is able to undertake the business until receiving the refusal order. The provision regarding to the application for license shall be applied *mutatis mutandis*.

Section 26: In the case where licensee fails to comply with the rule prescribed in the Royal Decree or the conditions in the license, the Bank of Thailand shall have power to order such service provider to ratify in time limitations.

Section 27: In the case where the licensee does an act or omit to act evidencing that it may cause serious damage to payment system of the country or fail to comply with the order of the Bank of Thailand, the Bank of Thailand shall be empowered to suspend the license until such failure has been correctly ratified within the prescribed time limitations.

Section 28: In the case where the licensee violates or fails to comply with the provision of this Royal Decree or does not rectify the acts in accordance with the order of the Bank of Thailand, the Bank of Thailand shall consider and submit the case to the Commission. The Commission shall consider and issue an order imposing an administrative fine not exceeding two million Baht, taking into account the

severity of the offence and/or suspend its license until the licensee has rectified the wrongdoing act.

Section 29: In the case where the licensee fails to comply with the provision of this Royal Decree or violates the order of the Bank of Thailand, the Bank of Thailand shall propose its opinion to the Commission for revoking its license. Should the Commission orders to revoke the license, the Bank of Thailand shall notify the revocation order publicly.

Section 30: In the case where the Bank of Thailand has realized that the license has been granted because the information has been incorrect or incomplete in accordance with the rule and condition of license, the Bank of Thailand shall propose its opinion to the Commission for the consideration to revoke its license.

CHAPTER 7

Discontinuing to provide service, discontinuing to carry out the business, merger or amalgamation

Section 31: In the case where any service provider wishes to discontinue providing service or discontinue carrying on its business, such service provider shall notify in writing together with the report regarding to the discontinuation of providing service or discontinuation of carrying on the business to the Bank of Thailand in advance not less than sixty days in accordance with the rules and procedures as prescribed in the notification of the Bank of Thailand.

When received the notification of service provider under paragraph one, the Bank of Thailand shall have power to order the service provider to take any action prior to discontinue providing service or discontinue carrying on its business.

Any service provider wishing to discontinue providing service or discontinue carrying on its business shall return its license to the Bank of Thailand.

In the case where the service provider wishes to merge or amalgamate with the others, the provision of paragraph one and two shall be applied *mutatis mutandis*.

Transitional Provision

Section 32: The service provider providing the service, which has not been regulated by any law, prior to the date that this Royal Decree comes into force and wishing to continue such business shall notify for registration and submit the application within sixty days since the date of this Royal Decree coming into force.

Section 33: The service provider undertaking the business in accordance with the other laws prior to the date that this Royal Decree comes into force, the nature of which has been the electronic payment service, shall be the service provider under this Royal Decree. The service provider wishing to continue its business shall

notify, register or apply for the license in accordance with this Royal Decree within one year since the date of this Royal Decree coming into force. This provision shall not apply to the service provider as prescribed by the Bank of Thailand with the approval of the Commission.

Draft
List Attached to Royal Decree
Regulating of Electronic Payment Services B.E. ...

List A

The service which shall be required notification prior to the commencement of such business operation;

(1) E-Money service used for purchasing goods or services from one entrepreneur

excluding e-Money service only used for the convenience of the customer without the procurement of any profit from the card issuing as prescribed by the Bank of Thailand with the approval of the Commission.

(2) Other services as prescribed by the Bank of Thailand with the approval of the Commission.

List B

The service which shall be required registration prior to the commencement of such business operation;

(1) Credit Card Network service;

(2) EDC service;

(3) Transaction Switching service for payment in one system;

(4) E-Money service used for purchasing specific goods or services as specified in advance at the place which has been in the same system for distribution or providing service;

(5) Other services as prescribed by the Bank of Thailand with the approval of the Commission.

List C

The service which shall be required the license prior to the commencement of such business operation;

(1) Clearing service;

(2) Settlement service;

(3) Electronic Payment Service through any device or network;

(4) Transaction Switching service for payment in several system;

(5) Payment Service Provider service;

(6) E-Money service used for purchasing specific goods or services as specified in advance in which the place of using has not been limited and the system for distribution or providing service has not been the same;

(7) Other services as prescribed by the Bank of Thailand with the approval of the Commission.