

The new payment systems bill: e-payments and beyond

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In recent months, there has been excitement about the prospect of new electronic payment services in Thailand. News reports have described a system that will enable instantaneous funds transfer using only ID cards.

From a public policy standpoint, it is challenging to move small payments to the electronic space. When that is accomplished, however, it can result in substantial benefits. For example, reducing the usage of cash can reduce the yield of robberies on the street and ultimately reduce the occurrence of robberies.

Bringing micropayments into the electronic realm is exciting, but it is only part of what could be made possible under the new payment systems bill approved in principle by the cabinet and based on a version proposed by the Finance Ministry.

Electronic payment services in Thailand are currently regulated under the Royal Decree on Electronic Payment Systems issued under the Electronic Transactions Act, as well as under a notification of the Finance Ministry issued under Section 5 of Revolutionary Council Decree No. 58. A considerable body of regulatory notifications exists under each.

Taken together, they set out the regulatory regime and the different categories of electronic payment businesses, which require notification, registration or licensing.

The new bill is expected to replace the older rules and consolidate the regulatory regime under a single act. It would discern between electronic payment systems and electronic payment services. The finance minister would set the major objectives and the Bank of Thailand would be responsible for the details and mechanics.

The central bank would have the authority to establish and operate payment systems that are systemically important, and to issue regulations.

A key feature in the new act is clarity with respect to finality of payment. In a transfer of funds among two parties, finality is the point at which the transferring party has irrevocably lost access to the funds, and the receiving party has irrevocably gained access to the funds.

If a court can issue an order that has the effect of reversing, changing, stopping or revoking a funds transfer, this means that payment is not actually final. Where a bank has received funds and made use of them, but is then ordered by a court to reverse the transaction, this can create significant problems, and thus presents systemic risk.

As an example, some jurisdictions feature a "zero-hour rule". The Bank for International Settlements describes this as "a provision in the insolvency law ... whereby the transactions conducted by an insolvent institution after midnight on the date the institution is declared insolvent are automatically ineffective by operation of law".

If an institution had received funds and made use of them, and the transaction was then rendered invalid under the foregoing, this could -- if the invalidated transaction was large enough -- threaten the solvency of the receiving financial institution. This is among the reasons that several financial institutions place holds on funds received. Unfortunately, holds run contrary to the instantaneous transfers that people expect these days.

In a 2008 review of Thailand's Bahtnet system, the International Monetary Fund noted that Thai law does not feature a zero-hour rule, but it recognised the possibility that a court could issue an order with similar retrospective effect.

The Bank of Thailand sought an opinion from the Council of State, which took the position that court-ordered receivership shall be effective from the time the order is read.

The new payment systems bill would provide that transfer, settlement or clearing through an electronic payment system that was successful and effective by the rules of the system cannot be revoked or reversed, suspended or stopped, even if ordered by a court, and even in the context of receivership or rehabilitation.

Though it will be necessary to review the full text of the law as enacted, the concept is present. Properly crafted, it can serve to eliminate systemic risk that would otherwise exist due to lack of finality of payment.

The new act would also address criminal penalties and administrative sanctions more clearly than the old regime, with a stronger regulatory framework benefiting everyone.

Finally, the new law would address transitional matters. Importantly, those who are already registered or licensed under the old regime would be deemed registered or licensed under the new one.

The bill has been referred to the Council of State and for review by the Justice Ministry and the Office of the Judiciary. We look forward to the further development of the law relating to electronic payments, in a manner that promotes the growth of electronic payments in Thailand.