

PENAL CODE AMENDMENT TARGETS E-FRAUD

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As existing Thai legislation does not adequately address all the legal issues surrounding the use of current technology, and in order to protect the Thai economy and consumers, on March 4, 2003 the Thai Cabinet passed a resolution proposing the draft *Act of the Amendment to the Penal Code* to Parliament as an emergency matter.

The proposed amendment to the Penal Code details criminal offences and punishments relating to fraud and related activities in connection with electronic cards and data messages.

What is an electronic card?

The term electronic card is defined under the proposed amendment as “a document or any other material, regardless of the manner in which an issuer has issued to an authorized user whose name is identified or not, by virtue of a recorded message or code through the application of an electrical or electromagnetic means or any other means of a similar nature, or through the application of an optical means, magnetic code or card number or any other symbol, whether it can be seen with the naked eye or not, including an electronic message, code, account number, serial number or any other numerical device which the issuer has issued to the authorized user without issuance of any other document or material, but shall be used in the same manner.

Counterfeit or modified cards

Under the proposed amendment, it is a crime to forge an electronic card either in whole or in part, or to modify information on an electronic card for the purpose of making another person believe that it is an authorized card for any other beneficial use. Individuals convicted of such offences face a jail term of up to five years and a maximum fine of 200,000 baht. The same penalties apply to individuals who make or own equipment that is used for forging or modifying electronic cards or for obtaining information from genuine cards in order to forge or modify a card.

Profession or use of a counterfeit card

The proposed amendment is not only aimed at counterfeit card makers, but also importers, exporters, users or sellers of fake cards. Importers or exporters of counterfeit electronic cards or equipment for making such cards, in or outside of Thailand, face up to 10 years' imprisonment and a fine of up to 200,000 baht. Those who sell or offer to sell counterfeit or modified cards face the same penalties.

Anyone who knowingly uses or holds for use a counterfeit or modified card will face up to seven years' imprisonment and/or a maximum fine of 140,000 baht.

Wrongful use

Using an electronic card or information on a card belonging to another person in a way that could cause damage to the card owner or the public is also an offence. Applicable penalties are up to five years' imprisonment and/or a fine up to 100,000 baht.

Possession of an electronic card, information or code of a card belonging to another person, with the intent to use in a way that could cause damage to the card owner or the public, is punishable by up to three years' imprisonment and/or a fine up to 60,000 baht.

Enhanced penalty

If any of the above offences are committed with an authorized card that was issued for the payment of goods, services or any other obligation in place of paying by cash, the penalty for the offence is increased by 50%.

While the existing Penal Code prescribes punishment for theft of money, the theft of information remains undefined. The Thai Penal Code was drafted in 1956 and needs to be updated to address offences perpetrated using modern technology. If the proposed amendment is passed into law, it will improve security and help stamp out electronic card-related crimes. Of key importance to the banking community, it will minimize liability risks from using electronic cards. Further, consumers will feel assured knowing that such high deterrents to electronic card offences are in place.

The draft bill is now being vetted by the Thai House of Representatives and could be passed into law before the end of 2003.