

## Electronic Evidence Fiche: THAILAND

### 1) DEFINITIONS

Thailand
<b>What are the definitions in your laws/regulations, if any, of:</b>
<b>Electronic evidence</b>
There is no specific definition under domestic laws.
<b>Computer system</b>
“Computer system” means computer device or set of computer devices that are connected and co-operated with another whereby command, program or else, and work process for automatic data processing thereof has been set up. (Section 3 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007).
<b>Computer data</b>
“Computer data” means data, text, command, program or else stored in a computer system and being able to be processed by a computer system, including electronic data under the law on electronic transactions. (Section 3 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007).
<b>Categories of computer data (e.g. basic subscriber information, traffic data and content data)</b>
“Computer traffic data” means data in relation to the communication of computer system that indicates the origin, source, terminal, route, time, date, size, duration, type of service or else relating to the communication of such computer system. (Section 3 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007).
<b>Electronic surveillance or real-time collection of computer/communication data</b>
There is no specific definition under domestic laws.
<b>Service provider (e.g. ISP, hosting)</b>
“Service provider” means (1) the one who provides others an internet access service or any other services that enable their communication via Computer System irrespective of whether such service is provided on his or her behalf or on behalf of or for the benefit of other persons; (2) the one who provides Computer Data storage

service for the benefit of other persons. (Section 3 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007)).

## 2) DATA RETENTION REGIME

Thailand

**Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?**

A Service Provider shall maintain Computer Traffic Data for not less than ninety days as from the date that data entered into Computer System. If it is necessary, the Competent Official may, in particular case and situation, order any Service Provider to maintain Computer Traffic Data for more than ninety days, but not exceeding two years. The Service Provider shall maintain client data which is necessary for identifying Client since his or her first use of service and shall maintain such data for not less than ninety days as from the ending date of service. (Section 26 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007)).

## 3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN A CRIMINAL TRIAL

Thailand

**What is the requirement under your domestic law for electronic evidence to be admissible in a criminal trial?**

Section 11 of the Electronic Transactions Act B.E. 2544 (2001) provides that:

“The admissibility of electronic data in evidence shall not be denied in legal proceedings, whether in a civil action, criminal action, or any other action, on the sole ground that it is electronic data.

In assessing the evidential weight of electronic data so as to conclude whether and to what extent it is reliable, regard shall be had to the reliability of the manner in which or the method by which the electronic data was generated, stored, or communicated, the manner in which or the method by which the integrity of the information was maintained, and the manner in which or the method by which its originator was identified or indicated and also to all relevant circumstances.

The provisions of paragraph one shall also apply to a printout of electronic data.”

## 4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

### 4.1. Direct requests from foreign authorities to service providers

#### 4.1.1. Requests for preservation

Thailand
<b>What legal framework(s) is/are applicable, if any?</b>
No framework applicable
<b>Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?</b>
Requests for preservation of e-evidence stored by service providers in Thailand are possible. However, limitations in complying with the requests might exist due to the provisions in the Personal Data Protection Act B.E. 2562 (2019) (PDPA). Therefore, requests should be sent via the MLA channel.
<b>If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?</b>
N/A (see above)
<b>Is a judicial order required from the requesting state?</b>
No
<b>Are there any time limits for data preservation? Any possibility of extension?</b>
According to Section 26 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007), as amended in 2017, service providers must retain computer traffic data for at least 90 days from the date of input, the period of which can be extended to up to 2 years if necessary, on a case-by-case basis. The same rule also applies for subscriber information.
<b>Would service providers in your country notify the data subjects of the request?</b>
It depends on the policy of each service provider.

4.1.2. Requests for voluntary disclosure

Thailand
<b>What legal framework(s) is/are applicable, if any?</b>
<b>Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?</b>
Requests for voluntary disclosure and requests for emergency disclosure of e-evidence stored by service providers in Thailand are possible. However, limitations in complying with the requests might exist due to the provisions in the Personal Data Protection Act B.E. 2562 (2019) (PDPA). Therefore, requests should be sent via the MLA channel.
<b>If they are prohibited or if there are limitations, are there any alternative options to obtain the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?</b>
N/A (see above)
<b>Is a judicial order required from the requesting state? Are there any time limits?</b>
No
<b>Would service providers in your country notify the data subjects of the request?</b>
It depends on the policy of each service provider.
<b>How can the process be simplified or quickened in emergency situations?</b>
Direct contact with the relevant Thai service provider before sending an MLA request may help quicken the process. Additionally, prior contact with a Thai police officer may also help speed up the execution of the request.

#### 4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

<b>Thailand</b>
<b>How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?</b>
For non-content data, the execution can be done through an order or a request by a competent official or an inquiry official. For content data, a court order should generally be obtained. (Section 18 and 19 of the Act on Commission of Offences relating to Computers B.E. 2550 (2007)).
<b>Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?</b>
If the request relates to a violation of certain laws for which Thai officials have the power to conduct electronic surveillance, such as the Anti-narcotics law, Special Cases law, Anti-money laundering law, Cybercrime law, Anti-human trafficking law, Anti-transnational organized crime law or Emergency Situation law, assistance in that regard could in theory be provided. However, there is no provisions in the Thai MLA Act that directly addresses that.
<b>What are the central and competent authorities in your country to:</b> <b>a) Receive a request for MLA in criminal matters?</b> <b>b) Execute/recognize the measure (if other than the receiving authority)?</b>
a) Office of the Attorney General (Central Authority of Thailand) b) Royal Thai Police, Department of Special Investigation, National Anti-Corruption Commission, Office of the Attorney General
<b>What are the accepted languages for MLA requests?</b>
The accepted languages are Thai and English.
<b>Can the request be submitted electronically to the central authority?</b>
An advance copy of the request may be sent electronically to the central authority for preliminary review. However, it must be followed by the original request via post or hand delivery.
<b>Can the request be submitted directly to the central authority?</b>
For MLAT partners, requests may be sent directly to the central authority (Office of the Attorney General of Thailand). For other countries, requests must be sent via diplomatic channels.

**What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?**

The requirements are mentioned in the MLA Act and applicable MLA treaties.

## 5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

### 5.1. Direct requests to foreign service providers

#### 5.1.1. Requests for preservation

Thailand

**What legal framework(s) is/are applicable, if any?**

The Thai Code of Criminal Procedure.

**Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers?**

Thai law enforcement agencies, such as the Royal Thai Police, can send requests directly to foreign-based service providers.

**If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?**

Via INTERPOL channel

**Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons?**

Thai law enforcement agencies can obtain domestic production orders if required by the foreign-based service providers.

#### 5.1.2. Requests for voluntary disclosure

Thailand

**What legal framework(s) is/are applicable, if any?**

The Thai Code of Criminal Procedure.

**Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?**

Thai law enforcement agencies, such as the Royal Thai Police, can send requests directly to foreign-based service providers.

**If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?**

Via INTERPOL channel

**Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?**

Thai law enforcement agencies can obtain domestic production orders if required by the foreign-based service providers.

5.2. Requests sent by your central authority for **Mutual Legal Assistance (MLA)**

Thailand

**What is your central authority to send requests for MLA in criminal matters?**

The Central Authority is the Office of the Attorney General of Thailand. The Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters B.E. 2537 (1994) governs the process of drafting MLA requests. The Office of the Attorney General is the agency tasked with preparing, finalizing, and sending requests to the Requested State. The Thai central authority maintains a database for all outgoing and incoming MLA requests. For Mutual Legal Assistance Treaty (MLAT) partners, requests can be sent directly to the central authorities of the requested states. For other countries, requests must be sent via diplomatic channels.

**Are informal contacts with the central authority of the requested states allowed and used?**

Yes, for example, through the Southeast Asia Justice Network (SEAJust).