

Executive summary

“Thailand’s Legal Preparation for the ASEAN Community”

As an organization which supports the legislative procedure, the Secretariat of the House of Representatives requires legal researches to assist the adoption and implementation of international legal instruments, particularly the binding legal instruments under the ASEAN Community. The ASEAN Community Center under the Secretariat of the House of Representatives realizes the significance of legal researches to contrive Thailand for the implementation of the ASEAN Community obligations. Furthermore, the study on legal harmonization in the ASEAN Member States can serve the ASEAN Community to achieve its goals.

This research paper has explored the ASEAN critical issues which cross over three pillars of the ASEAN Community and selected the consumer protection in e-commerce to be a case study of the ASEAN legal harmonization. The amount of internet users in ASEAN has reached 199-million persons. Its e-commerce markets can expand due to the ASEAN ICT Masterplan 2020 and the e-ASEAN Framework Agreement which put in place the e-commerce development strategies such as the strengthening of consumer trust in online shopping. Therefore, the study on consumer protection in e-commerce serves the purpose stipulated in ASEAN Vision 2025 to establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation.

The purposes of the study include (1) to strengthen the partnership collaboration between the Secretariat and its partners to conduct the legal research and encourage the participation of the Secretariat personnel in the conduct of legal research whereas the output of the research can be utilized for the operation of the Secretariat, (2) to fortify the role of the ASEAN Community Center under the Secretariat as an ASEAN legal information center, (3) to present the output of the research at the Parliamentary ASEAN Community Forum and propose the appropriate method to develop Thailand’s domestic law for the legal harmonization among ASEAN countries for the benefit of the ASEAN Community.

The scope of the research consists of (1) to study the theory on the relationship between domestic law and international law and the harmonization of law, (2) to analyze the legal harmonization for the ASEAN Community from ASEAN Charter, ASEAN Community Blueprint or related documents for selecting the study issue, (3) to analyze the selected issue “the consumer protection in e-commerce” which is composed of

the global and regional e-commerce trend, the cross-cutting sphere of the consumer protection in e-commerce in three pillars (APSC, AEC, ASCC) of the ASEAN Community and the concept of the consumer protection on ASEAN e-commerce, (4) to explore and analyze the consumer protection in e-commerce in Thailand, Malaysia and Vietnam, (5) to synthesize the appropriate method to harmonize the law on the consumer protection in ASEAN based on the international best practice, (6) to arrange the focus group meeting to incorporate the important issues for the formulation of policy recommendations, (7) to formulate the recommendation for the development of Thailand's domestic law on consumer protection in e-commerce by taking into consideration the National Reform Agenda and the legal readiness of Thailand for the operation of the ASEAN Community.

The study finds that the traditional legal harmonization aims to harmonize the incompatible domestic laws within a country. However, in the 20th century, the scope of legal harmonization has been broadened to cover the inter-state harmonization as a result of the expansion of international trade and disperse of political regimes. The emergence of international trade has intensified the disperse of international legal harmonization. When there exists a diversity of rules governing international trade, the transaction costs certainly escalate. The higher cost is a disadvantage for businesses' competitiveness. Consequently, countries agreed to conclude international agreements by which the state parties undertake to transform their obligations into domestic laws. The domestic laws of each state party, therefore, were harmonized. Furthermore, the establishment of international organizations such as the Hague Conference on Private International Law, the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) whose task aim at realizing a model law for countries to adopt is another choice for the harmonization of laws. However, it is obligatory to have a limit in the scope and degree for the harmonization of laws. These thoughts are categorized into 2 groups: the minimalist approach and the maximalist approach. The first one acknowledges diversity in the legal systems of different jurisdictions and considers that the harmonization of laws shall be limited to the extent that the scopes actually need to be synchronized, while the maximalist approach believes that the harmonization of laws with a limited scope is not able to achieve the goal to diminish the incompatibility of laws.

ASEAN was inaugurated by the Bangkok Declaration on 8 August 1967. The ASEAN Charter which is the constitution of the ASEAN Community does not formulate

its own distinctive legislative regime. The relationship of the ASEAN Community and its members, accordingly, is based on the international law system. In other words, the member countries of the ASEAN Community are only bound by the treaties concluded among them. Any instruments issued by the ASEAN Secretariat or other organs cannot render any legal obligation for the member countries to comply. Accordingly, the harmonization of laws for the ASEAN Community needs to begin with the conclusion of treaties. At the moment, the ASEAN member states have concluded a high number of international agreements which are divided into 2 groups: (1) the international agreements with binding force, for instance; the ASEAN Comprehensive Investment Agreement (ACIA) and the ASEAN Framework Agreement on Services (AFAS), (2) the agreements which reflect the political will of the ASEAN member states but does not constitute a legal obligation for its members such as the ASEAN Political and Security Community Blueprint 2025.

According to the ASEAN Community Blueprint 2007 and the ASEAN Community Blueprint 2025, the ASEAN Economic Community (AEC) aspires to become a competitive economic region with equitable economic development among its members. The thriving e-commerce is one of the core strategies to achieve its ambitious goal. The e-commerce market in the ASEAN region has its potential owing to its “mobile moment”, with the majority of internet traffic coming from mobile devices with the rollout of 3G and more affordable devices. However, there is an outstanding gap of ICT infrastructure between the ASEAN member countries. Hence, the ASEAN members have signed the e-ASEAN Framework Agreement to impose obligations for its signatory states to create an ecosystem for e-commerce to thrive. One of its strategies includes the strengthening of consumer trust in online shopping. The manner in which online shopping or e-commerce is conducted is different from traditional transactions as it is more sophisticated, thus exposing and increasing consumer vulnerability to unfair trade practices. As a consequence, the e-ASEAN Framework Agreement prescribed the obligation of the parties to adopt electronic commerce regulatory and legislative frameworks that create trust and confidence based on international norms. We find that the legislative framework on e-commerce consumer protection in Malaysia, Thailand and Vietnam is based on international norms such as the UNCITRAL Model law on Electronic Commerce 1996 and the OECD Guideline for Consumer Protection in the Context of Electronic Commerce 1999. The OECD Guideline defines that consumers in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce. Moreover, fair business, advertising and marketing

practices are required. Additionally, the business operators shall provide accurate, clear and easily accessible information about products/services sold, as well as, the identification of themselves. The online payment shall be a secured payment. The personal information of consumers shall be protected and utilized to the extent of the consumers' permission. The consumers shall have access to an effective dispute settlement.

Despite the conformity of the legislative framework with the OECD Guideline, the level of consumer protection in Thailand is less protective than in Vietnam and Malaysia, particularly in the pre-contractual state and with regard to the right to rescind a contract. Thailand's legislation does not explicitly impose the duty for business operators to provide information during the pre-contractual state. Considering the legislation of Vietnam and Malaysia, Vietnam imposes strict conditions on the information that must be provided by business operators, whilst Malaysia prescribes the right of consumers to be informed in accordance with the minimum standard of the OECD Guideline. However, the level of e-commerce consumer protection of both Vietnam and Malaysia is not equivalent to the strict law of the European Union. Regarding the right to rescind a contract, Thailand and Malaysia have the same legislative framework that consumers can rescind a contract without a reason for rescission. However, the Direct Selling and Direct Marketing Act of Thailand neither addresses any obligation of both consumers and business operators after the rescission of a contract nor does it consider the special characteristics of sales of digital content.

Undeniably, Thailand's legislative framework does not provide a sufficient level of consumer protection in e-commerce. Legislative reform needs to start with the right of consumers to be informed and the right to rescind a contract. We propose that the Direct Selling and Direct Marketing Act should lift the level of consumer protection, especially with the regard to the right to be informed. Chapter 3 of this Act should provide for the specific and detailed information that must be provided by e-commerce business operators. Moreover, new provisions on the right of e-consumers to rescind the contract should be incorporated into the Act, taking into consideration the special nature of e-commerce. Alternatively, existing provisions of Articles 33-36 of the Act should be revised to strengthen consumer protection, by including essential details such as the calculation of the prescription period and the result of the rescission.

Legislative reform on consumer protection in e-commerce does not only prepare Thailand for the operation of the ASEAN Community, but also galvanizes

Thailand's e-commerce in achieving its aims in accordance with the Digital Thailand Plan 2016 and Agenda 31 of the National Reform Agenda: consumer protection. The problems of insufficient information disclosure and enforcement of consumer rights are at the heart of 21st century consumer protection. Further improvement of the existing regulations is needed to provide a baseline of national consumer protection in e-commerce so as to strengthen consumer confidence as well as to ensure adequate protection for the e-consumers.

At the same time, legislative reform on consumer protection in e-commerce diminishes the obstacles of the scattered legislative framework in cross-border online transactions so as to make the ASEAN Community to be a dynamic single market and production base. In this regard, the ASEAN Committee on Consumer Protection should play a significant role in enforcing the rights of consumers in e-commerce.