

B2C E-COMMERCE FROM A LEGAL PERSPECTIVE

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AUGUST 2000

Many of the legal issues confronting companies doing business online are cutting edge, here in Thailand as well as around the world. Proper legal advice for conducting electronic commerce requires a multidisciplinary approach. Many areas of the law may be implicated such as contract, corporate, tax, banking and finance, employment, intellectual property, and international laws. Indeed, in addition to ensuring compliance with laws and regulations, businesses transacting online must protect their commercial interests and intellectual property rights through sufficient and well-drafted legal agreements.

In order to enhance the validity and security of "B2C" e-commerce transactions in Thailand, online businesses should consider taking some precautionary measures. The following is a non-exhaustive list of issues which should be taken into consideration when doing business online:

1. Governing Law and Jurisdiction Clauses.

Because the Internet and web sites cross national boundaries, companies located in Thailand face the risks of being subject to foreign legal systems and brought to court in foreign jurisdictions. To minimize the risks of being subject to unknown foreign law and jurisdictions, companies selling goods online may consider restricting their offer to nationals of specific countries. In addition, companies should post clauses on their web site to the effect that all transactions relating to the subject matter shall be governed by Thai law and that disputes arising out of the transaction shall be resolved by arbitration in Thailand, or be decided by the courts of Thailand. Whether such declaration would be recognized and enforced by a foreign jurisdiction is another issue.

2. Terms and conditions.

The terms and conditions applicable to each transaction should be carefully drafted and brought to the attention of the consumers before their acceptance of the offer.

3. Hand-written confirmation.

Under Thai law, some agreements require a handwritten signature to be enforceable, such as agreements for the sale of goods where the agreed price is more than 500 Baht (approximately US\$12.50). Until the new law on electronic signature and

transactions is passed, written confirmation should be obtained in order to ensure the validity and enforceability of the terms and conditions of the agreements.

4. Clear and obvious disclaimers.

The presence of disclaimers (either to limit the offer or to disclaim liability) may not be sufficient to avoid liability or to override applicable legislation, but they may sometimes be used as a mitigating factor and should therefore be clearly expressed on the web site.

5. Domain Names.

As commercial uses come to dominate Internet traffic, domain names have evolved and besides providing a means to access a particular web site, domain names can serve to identify (or misidentify) the owner of the site and his trade. Companies should be diligent and register their names and trademarks as domain names, both as a means of furthering their business and to prevent others from trading on their goodwill.

6. Intellectual Property.

For many e-commerce companies, the most valuable assets are its intellectual property assets. It is these assets that are at great risk of being lost while doing business online without legal protection. Any one web site may contain various intellectual property assets, and companies should take all necessary steps to protect those assets before moving them online. Similarly, companies should be careful and obtain adequate licenses before posting third parties' intellectual property rights, such as copyrighted materials or trademarks.

7. Taxation

In the absence of specific regulations, online transactions are presently subject to the same taxes and duties that apply to conventional transactions (e.g., sale of goods/services). While it is widely acknowledged that tax laws and customs laws will not be easy to enforce in the online world, evasion runs the risk of fines and imprisonment under Thai law.

There is no doubt that the most successful businesses will be those which carefully plan their move into cyberspace and can navigate around potential legal pitfalls.

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