

บทคัดย่อ

การพาณิชย์อิเล็กทรอนิกส์ เป็นรูปแบบใหม่ในการทำธุรกิจ ซึ่งมีบทบาทสำคัญในการค้ายุคใหม่ ทั้งในระดับชาติและระดับสากล ปัจจัยสำคัญประการหนึ่ง ซึ่งทำให้พาณิชย์อิเล็กทรอนิกส์ประสบความสำเร็จคือ การมีนโยบายและบทบัญญัติของกฎหมายที่เหมาะสม บทความนี้มีวัตถุประสงค์ในการหาคำตอบว่าประเทศไทยมีนโยบายและกฎหมายที่สนับสนุนการเติบโตทางการค้าด้วยวิธีการทางพาณิชย์อิเล็กทรอนิกส์หรือไม่ เพื่อให้บรรลุถึงวัตถุประสงค์ดังกล่าว ผู้เขียนจึงแบ่งการนำเสนอบทความนี้ออกเป็น 4 ส่วน ดังนี้

ส่วนที่ 1 ความทั่วไปเกี่ยวกับพาณิชย์อิเล็กทรอนิกส์ : ในส่วนนี้จะให้ความหมายและอธิบายชนิดต่าง ๆ ของพาณิชย์อิเล็กทรอนิกส์ ตลอดจนแสดงประโยชน์และมูลค่าทางการค้าของพาณิชย์อิเล็กทรอนิกส์ของประเทศไทย

ส่วนที่ 2 นโยบายของประเทศไทยที่เกี่ยวกับพาณิชย์อิเล็กทรอนิกส์ : ส่วนนี้แสดงถึงนโยบายและแผนแม่บทที่เกี่ยวข้องกับพาณิชย์อิเล็กทรอนิกส์ของประเทศไทย

ส่วนที่ 3 กฎหมายที่เกี่ยวข้องกับพาณิชย์อิเล็กทรอนิกส์ : ในส่วนนี้จะนำเสนอบทบัญญัติของกฎหมายทั้งโดยตรงและโดยอ้อมที่เกี่ยวข้องกับกฎหมายพาณิชย์อิเล็กทรอนิกส์ เพื่อวิเคราะห์ว่าบทบัญญัติเหล่านั้น ได้ทำหน้าที่สนับสนุนการเติบโตของพาณิชย์อิเล็กทรอนิกส์ในประเทศไทยหรือไม่

ส่วนที่ 4 บทสรุป

ABSTRACT

Electronic Commerce is a new form of trade which has played an important role in modern trade at both national and international levels. Some key factors which are necessary for the success of electronic commerce, in any country, are the provisions of proper policies and legal provisions. The objective of this article is to find the answer whether Thailand has such proper policies and laws to support the growth of trade via electronic commerce. In order to fulfill the objective, the author will divide the article into four parts as follows:

Part One – Overview of Electronic Commerce: This part will give meaning and illustrate the available types of electronic commerce. It will also indicate the advantages of electronic commerce, as well as, its value of trade in Thailand;

Part Two – Policies of Thailand concerning Electronic Commerce: This part will demonstrate the policies and master plans of Thailand which concern electronic commerce;

Part Three – The Laws relating to Electronic Commerce: The third part will review the present legal provisions in Thailand, both directly and indirectly, relating to electronic commerce in order to analyze whether these provisions facilitate and support the growth of electronic commerce in Thailand; and

Part Four – Conclusion.

The Laws and Policies of Thailand in Supporting Electronic Commerce^{*}

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Introduction

The objective of this article is to find the answer whether Thailand has such proper policies and laws to support the growth of trade via electronic commerce. In order to fulfill the objective, the author will divide the article into four parts as follows;

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Part Two - Policies of Thailand Concerning Electronic Commerce: This part will demonstrate the policies and master plans of Thailand which concern electronic commerce;

Part Three - The Laws Relating to Electronic Commerce: The third part will review the present legal provisions in Thailand, both directly and indirectly, relating to electronic commerce in order to analyze whether these provisions facilitate and support the growth of electronic commerce in Thailand; and

Part Four - Conclusion.

Part One: Overview of Electronic Commerce

^{*} This article is derived from the author's presentation of the same title, delivered at the 6th Asian Law Institute (ASLI) Annual Conference held in Hong Kong, May 30th, 2009

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Electronic commerce is a new form of trade which has played an important role in modern trade at both national and international levels. In general term, “electronic commerce” means the dispatch and/or receipt of data message by electronic means in order to conclude a commercial transaction. This data message covers all kind of information whether expressed in form of a letter, number, sound or image. Classic example of electronic commerce is on-line trading which is buying and selling goods and providing service over electronic networks.

The reason that drives electronic commerce to become a major role player in current trade is that business traders realize of excessive benefits of electronic commerce that can be elaborated as follows:¹

1. Electronic commerce changes the culture of trade from a traditional style of trade that located at one certain place of business with definite working hours into a modern style of trade. Trade in modern style can operate anytime online through electronic networks with no need to have a physical business working place since meetings between sellers and buyers are no longer necessary.

2. Businesses are better to reach their customers across border. Timezone differences can even more become an advantage.

3. Electronic commerce can reduce costs of business doing in the aspects of both time saving and expense saving.

Electronic commerce trading can be classified into three available types ²

- 1) Business to Business (B2B) is a type of electronic buying and selling or service providing which is done between business sectors. For instance transaction between manufacturer and exporter or that between importer and exporter.

- 2) Business to Government (B2G) is a type of sale or service providing which is done between business sector as one side and a government unit on the other.

- 3) Business to Consumer (B2C) is a type of sale or service providing which is directly offered to customers. For example buying a CD from Amazon.com is the most familiar example of electronic commerce of B2C type.

¹ Orabund Panuspatthna, Law on Electronic Commerce (Bangkok : Nititham Publishing, 2002), p.4.

² International Institute for Trade and Development, “Research Study on Guideline for Implementation of E-Commerce in TNZCEP,” Bangkok, 2007, p.10.

The survey statistic of The National Statistical Office of Thailand showed that in the year 2007, among the three types of electronic commerce trading B2C took the highest share at 72.5 percent of electronic market. B2B was the second whose share in the market was at 27.2 percent while B2G was the last of 0.3 percent share.³

The same survey also showed that the total value of online trade to the year 2007 was 427,460 million Baht. B2G type took 55.4 percent of 233,982 million Baht, whereas B2B type took 29.8 percent of 127,325 million Baht and B2C type took only 14.8 percent of 63,425 million Baht.⁴

Part Two: Policies of Thailand Concerning Electronic Commerce

Currently Thailand has two major policies on electronic commerce along with a master plan and another draft master plan.

1. IT 2000 Policy Framework

On February 20th, 1996 Thai cabinet announced its first national policy on information technology called “IT 2000 Policy Framework.” This policy framework set out a national guideline to promote and develop building and exploitation of information technology within the country. Its implementation covered the five year period during the years 1996 to 2000.

2. IT 2010 Policy Framework

Later in the year 2000, the National Commission on Information Technology announced the second national policy framework. It was named “IT 2010 Policy Framework” aiming to cover the ten year period during 2001 to 2010. This framework emphasized on role of information technology as a tool to drive the country’s economic and social development.

3. Master Plan for Development of Information and Communications Technologies (ICT Master Plan) of 2002-2006

As ten year implementation of the IT 2010 Policy Framework was too long and no longer suitable to the rapid change of information technology; the Ministry of Science and Technology in cooperation with The National Economic and Social Development Board, consequently, established the strategic master plan on

³ The National Statistical Office of Thailand, “Survey Status of Electronic Commerce in Thailand,” Bangkok, 2007.

⁴ Ibid.

information technology. This master plan covered the same five year period as that of the Ninth National Economic and Social Development Plan i.e., from 2002 to 2006.

The Master Plan of 2002 – 2006 was set up to implement the IT 2010 Policy Framework into practice by imposing the related government agencies to set out their visions, missions, strategies and performance plans in accordance with the provisions of the IT 2010 Policy Framework. Those related government agencies were obliged to accomplish their missions within five years.

4. Draft ICT Master Plan of 2009 – 2010

After the end of the first ICT Master Plan, on September 11th, 2007; the cabinet issued a resolution to extend its implementation until the end of the year 2008. Draft of the new ICT Master Plan is now under the arrangement of the Ministry of Science and Technology in cooperation with the Ministry of Information and Communications Technologies. Its vision is that Thailand shall be a smart society with information literate. It will build and exploit the country's information and communications technologies smartly under the philosophy of sustainable development.

Part Three: The Laws Relating to Electronic Commerce

1. Legal Provisions Directly Relating to Electric Commerce

Presently, Thailand has two Acts which directly relate to electronic commerce. They are:-

1) The Electronic Transactions Act of B.E. 2544 (2001)

The reason for promulgation of this Act is to provide legal recognition of electronic transactions by enabling them to have the same legal effect as that given to transactions made by traditional paper means. The Act ensures a regulatory environment in order to promote the reliability of electronic commerce as follows:-

- Recognition of data messages by treating them the same as the messages made or evidenced in writing as well as treating them as an original document under the law.
- Recognition methods of dispatch and receipt of data messages.
- Recognition of the use of electronic signatures.
- Evidential admissibility of data messages.

The Act applies to all commercial transactions performed by using a data message except ones that relate to family matters and succession.⁵ This Act shall, also, govern electronic transactions in the public sectors if they are made in the form which are in accordance with the rules and procedures prescribed by the Royal Decree.⁶

Moreover, in order to facilitate electronic commerce business, the Thai Government has issued the Royal Decree of B.E.2551(2008) to monitor the business operation of electronic payment services. In addition, the Royal Decree Prescribing the Service Business Operator Relating to Electronic Commerce Which Shall Be Subject to Prior Notification, Registration or License of B.E. ... and the Royal Decree Prescribing the Security Procedure Presumed as a Reliable Method for Electronic Transaction of B.E. ... shall be announced in a very near future.

In Thailand the Electronic Transactions Act has been seen as an important player in facilitating legal environment that takes into account the growth of electronic commerce business.

2) The Computer Crime Act of B.E. 2550 (2007)

The objective of this Act is to stipulate measures aimed at preventing and suppressing the commission of a computer related offences. The contents of the Act can be summarized as follows:-⁷

- The Act stipulates three types of offences: offences related to computer system, offences related to computer data and offences related to providing of tools used in committing a computer crime.

- The Act imposes obligations and liabilities of internet service providers (ISP): for example duty to store computer traffic data for at least ninety

⁵ The Royal Decree Prescribing Civil and Commercial Transactions Excluded from The Electronic Transactions Act of B.E. 2549 (2006), section 3.

⁶ The Royal Decree Prescribing Rules and Procedures of Electronic Transactions in the Public Sectors of B.E. 2549 (2006).

⁷ Please see Orabund Panuspatthna, "Role of the Computer Crime Act of B.E.2550 on the Protection of Copyrighted Works," Intellectual Property and International Trade Law Forum Tenth Anniversary, The Central IP & IT Court, 2550 (2007), pp 39-73.

days from the date on which the data is input into a computer system, duty to keep the necessary information of the service users in order to be able to identify them from the beginning of the service provision.

- Computer data that acquired by the competent official shall be admissible in evidence under the law.

It can be claimed that the Computer Crime Act supports ICT infrastructure by ensuring the security and building confidence of interested parties in performing electronic transactions.

2. Legal Provisions Indirectly Relating to Electronic Commerce

Apart from the above mentioned legislations, Thailand also has various Acts which are not directly related to but are involved in electronic commerce promoting. These provisions are:-

1) The Penal Code

Since the electronic card is a popular form of payment in today business. In B.E.2547 (2004), seven new provisions of Sections 269/1 to 269/7 were added to the Penal Code of Thailand. These provisions stipulate the offences related to electronic card forgery; for example, making, using, and owning of forged electronic card are constituted as criminal offences and shall be punished to a fine or imprisonment.

2) Consumer Protection Laws

- Consumer Protection Act of B.E. 2522 (1979) This Act gives consumers a protection against false, misleading and unfair advertising of goods and services. It guarantees that consumers shall have the same rights irrespective of whether the transaction is carried out electronically or by traditional means.

- Direct Selling and Direct Marketing Act of B.E. 2545 (2002) As electronic transaction falls under the definition of the term “direct marketing” of the Act; sellers and providers who offer their goods or services to customers through electronic means are required to comply with the provisions of the Act. For instance, documents regarding the purchase or sale of goods or services to customers shall have Thai statement that is easy to understand; the customers shall have the right to terminate the contract within a cooling-off period.

3) Data Protection Laws

- Credit Information Business Act B.E. 2545 (2002) This Act sets out several measures to protect credit information such as prohibiting a credit

information company from gathering and recording individual's information that does not relate to the request for credit; the credit information company shall prepare system in place to secure the confidentiality and safe keeping of information to prevent the abuse and unauthorized access use of the credit information.

- Personal Data Protection Bill This Bill is currently on its drafting process. The Bill follows the principles set out under the worldwide accepted model, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.⁸ However, at present, the provisions on Tort under the Civil and Commercial Code provides legal protection that can cover personal data on consumer and business information.

Part Four: Conclusion

From the above three parts, the author would like to analyze and conclude that:-

1. Thailand has set out its policy in providing an environment that supports ICT infrastructure development; the policy, also, emphasizes on using of technology as a tool to increase the country's economy. Therefore, it can be considered that Thailand has direct policy to promote electronic commerce development.

2. Thai Government sector has well responded to the country's ICT policy. Various government agencies, for instance, the Ministry of Information and Communications Technologies, The National Electronics and Computer Technology Center play role to increase efficiency of Thai information technology as well as strengthening the performance of the country's industrial sector. The Department of Business Development, Ministry of Commerce is in charge with opportunity and confidence building for electronic commerce business operators.

Apart from this, electronic transactions have also been introduced by government agency to provide services to the public in the form of government to citizen (G2C) type. Examples are electronic custom services of the Custom Department, electronic tax filing services of the Revenue Department.

⁸ Please see Orabhund Panuspatthna, "Legal Protection of Personal Data under Thai Laws," National Telecommunication Commission Annual Review, 2008, pp. 157-178.

3. It is obvious that Thailand provides adequate legal provisions to support electronic trade. Those legislations are both directly and indirectly related to electronic commerce. Illustration has already been made in part three of this article.

The analysis, finally, leads to the answer that policies and laws of Thailand are proper to support the rapid growth and development of electronic commerce. Also, electronic trade is a new opportunity for Thai business operator that is worth a try.