



Thailand: *Legal Developments*

E-COMMERCE IN THAILAND: A SLOW AWAKENING

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There have been few developments in the IT sector since the publication of our newsletter "E-Commerce Awaits" in June 2000.¹ Despite numerous government initiatives, Thailand still lacks the proper infrastructure and legal framework necessary to support e-commerce. As a result, most businesses operating in Thailand have been unable to take full advantage of the opportunities it offers.

However, changes should take place in the near future with the adoption of specific e-commerce related laws and the forthcoming deregulation of the telecommunications sector, which will bring security for businesses and users, reduced tariffs, and higher speed connections. This newsletter provides an overview of the proposed legal framework along with a summary of issues that need to be tackled to speed up the deregulation of the telecommunications sector.

Adoption of a Legal Framework

At present, there are still five electronic-commerce-related laws on the agenda. The Electronic Transactions Bill is awaiting consideration of the Senate, while the Universal Access Bill is awaiting revision by the Office of the Council of State.² The Data Protection law, the Electronic Fund Transfer law, and the Computer Crime law are still in the drafting stage. The laws were drafted by the National Information Technology Committee ("NITC") in conjunction with the National Electronic and Computer Technology Center ("NECTEC"), which acts as the secretariat.³

◆ Electronic Transactions Bill

The adoption of the Bill is crucial for the development of e-commerce in Thailand, because there are presently no laws and regulations that address transactions taking place via the Internet with the exception of sector-specific regulations or notifications (such as the Regulation of the Stock Exchange of Thailand Re: Trading of Securities through the Internet System 2000).

Under the present system, electronic signatures are not yet recognized as valid and binding signatures. The proposed Bill would resolve that problem in addition to providing the legal framework necessary to support electronic transactions and documents as well as allowing for their electronic retention under certain con-

ditions. When passed, the law will apply to civil and commercial transactions with a few exceptions, which will be prescribed in a Royal Decree to be adopted under the law.

Under the proposed Bill, electronic signatures will be given the same legal status as handwritten signatures, provided that a "reliable" method capable of identifying the signatory is used. The Bill, based on the UNCITRAL model, is "technology neutral" in that it does not require signatures to be made through the use of a specific technology. However, a Royal Decree to be adopted thereunder will provide a list of "secure" technologies.

Certification service providers may be required to register and/or obtain licenses, as prescribed in the Royal Decree. An "Electronic Signatures Commission", a regulatory body under the Bill, is to be set up to lay down policies for the promotion and development of the certification systems.

The Electronic Transactions Bill was expected to be enacted by the end of 2000, having passed the third and final required reading of the House of Representatives that year. However, adoption of the Bill was delayed because the Senate failed to endorse it before the government's dissolution when it lost the last election early this year. Recently, the new National Assembly agreed to continue the consideration of the Bill drafted by the prior government. As a result, the Bill is now awaiting scrutiny by the Senate, which reconvenes in August of this year. However, there are rumors that the Bill may undergo revision in order to clarify its scope and some definitions. One main issue is whether or not transactions with the government should be covered by this law.

◆ Universal Access Bill

The Universal Access Bill aims at promoting and supporting the development of a proper information infrastructure throughout Thailand. This law is necessary in order to comply with Section 78 of the Constitution of the Kingdom of Thailand (1997) whereby Thailand must provide universal access to information by developing adequate information infrastructures throughout the country. Under this law, a special information infrastructure development promotion fund is to be

set up to assist local communities in the establishment and development of their information centers. The Bill places special emphasis on the allocation of funds to improve access to information by the disabled, children, elderly, and the underprivileged in Thailand's society. The Bill is presently with the Office of the Council of State, and its contents are likely to be revised.

◆ Data Protection Law

The draft of the Data Protection law is almost finished and was released for public hearing earlier this month. Based on the data protection laws of the European Union, Australia, New Zealand, and Hong Kong, the draft law will provide for the protection of personal data of individuals. The law, which is aimed at protecting individuals from the misuse of their personal information, will also regulate collection and retention of such information. However, the proposed draft does not protect employees' data and does not cover state agencies and mass media.⁴

◆ Computer Crime Law

The draft of the Computer Crime law is nearly completed. A partial version was submitted for public hearing earlier this month. This law will clarify what constitutes a computer crime, which includes, as a few examples, unauthorized access, interception of data, use of a computer; computer-related espionage, forgery, fraud, and sabotage; and reproduction of a protected computer program. The law will also provide for penalties for non-compliance, but these sections were still being drafted at the time of writing.

◆ Electronic Fund Transfer Law

The Electronic Fund Transfer law is still in the drafting process, thus, there is very little information about its contents. What we do know is that this law should establish security procedures for electronic fund transfers.

FOOTNOTES:

¹A copy of our newsletter, which provides information on the status of e-commerce and initiatives taken by the government in the IT sector, is provided on our web site www.tillekeandgibbins.com.

²The Office of the Council of State acts as the Secretariat to the Council of State, a legal institution performing consultative and adjudicatory functions. The Office is responsible for drafting, considering, and reviewing proposed legislation as entrusted by the Council of Ministers.

³The Information Technology Development Project adopted by the Cabinet on December 15, 1998 entrusted the NITC with the drafting of the laws. In addition to these laws, NECTEC is drafting the first national Internet policy which will provide a framework for Internet development within the country.

⁴Protection from misuse must be sought under other applicable laws such as the Constitution, the Penal Code of Thailand 1956, the Official Information Act 1997, and the Press Act 1941.

Deregulation of the Telecommunications Sector

While Thailand has undertaken measures to liberalize its telecommunications sector by 2006 pursuant to WTO requirements, much remains to be done before business and end-users can benefit from market competition.

In November 1997, the Thai government adopted a comprehensive Master Plan for Telecommunications Development, which provides guidelines for:

- the establishment of an independent and impartial regulatory body, the National Telecommunications Committee (“NTC”);
- the privatization of two state enterprises, the Communications Authority of Thailand (“CAT”) and the Telephone Organization of Thailand (“TOT”);
- the conversion of existing Build-Transfer-Operate concessions into licenses; and
- the opening up of the telecom market to competition through a step-by-step liberalization process.

Implementation was nearly completed, but due in principal to the local economic downturn, workers’ resistance and, more recently, the election which took place early this year, it suffered delays.

♦ Formation of the NTC

The Organization of Frequency Wave Allocation and Supervision of Radio Broadcasting, Television and Telecommunications Enterprises Act (“Frequency Law”) was enacted on January 12, 2000 and paved the way for the creation of two government agencies--the NTC and the National Broadcasting Committee (“NBC”).

Their creation, however, has been delayed due to criticism over the selection panel and lack of transparency in the selection method. Furthermore, the Telecommunications Business Operations Bill, which will provide guidelines and control the powers given to the NTC, has not yet been adopted. The controversial Bill, which will also repeal the Existing Telegraph and Telephone Act 1934, abolish the Post & Telegraph Department’s monopoly rights in the market (rights which were transferred to CAT and TOT), and regulate the issuance of licenses to private operators, is now awaiting consideration by the Senate. It is likely that the contents of the Bill will be revised in order to clarify the role and powers given to the NTC and give better consumer protection.

When formed, the NTC and NBC will be powerful independent regulatory bodies in charge of overseeing the issuance of licenses and regulating the telecommunications, radio, and television sectors. It is hoped that the formation of the NTC will not suffer further undue delay as, pursuant to Section 80 of the Frequency Law, the issuance of new telecom licenses by TOT and CAT has been suspended until its creation.

♦ Privatization of TOT and CAT

The two state enterprises are preparing to privatize their organizations and register as private limited companies early next year and public limited companies by the second quarter of the year. Pursuant to the State Enterprises Corporatization Act 1999, the State Enterprises Corporatization Policy Committee will decide which activities, rights, liabilities, responsibilities, and assets of the state enterprises should be transferred to the newly formed limited companies. Remaining assets and liabilities will be vested in the Ministry of Finance.

In addition, the Cabinet has just approved the State Investment Corporatization Bill, which will assist in speeding up the privatization of the state enterprises. Under the Bill, a State Investment Corporation is to be established with the duty, among others, of promoting the state enterprises to investors.

Privatization, however, may suffer further delays if the relevant parties to the existing BTO concessions awarded by CAT and TOT can not agree on a conversion scheme. The government and the private operators disagree on the method to be used for calculating the compensation payments to be made for each BTO concession. The government recently set up a new panel to come up with a new proposal by the end of this year.

With the coming privatization of CAT, it was asked to release its stake in Internet Service Providers (“ISPs”). Until now, ISPs have had to obtain their licenses from CAT, which requires a free 32% interest in a provider’s capital stock. The ISPs have asked the Ministry of Transport and Communication to free them from CAT’s control, thereby allowing them to freely compete in the market, especially with CAT becoming one of their competitors in the new deregulated market. A panel was set up by the previous government to study CAT’s

redemption of its stake in all ISPs. However, the process was put on hold with the recent election and may be stalled further until the new NTC becomes operational.

Luckily, the fierce competition between CAT and TOT has brought some of the costs down, benefiting end-users as both state enterprises slowly prepare to make their move for a competitive advantage before the market becomes fully deregulated and internationally strong competitors arrive in 2006.

Recent Developments

The government has been quite active recently in addressing Thailand’s lack of adequate measures to support the development of electronic commerce.

In addition to addressing the lack of an adequate legal framework and the slow implementation of the Telecommunications Master Plan, the government is also working on increasing the number of IT specialists in Thailand. In that respect, the government will adopt measures to improve the IT education system and also open up the sector to highly skilled foreign IT specialists. With this in view, visa and work permit requirements for such specialists may be eased in the near future.

The Board of Investment (“BOI”) recently announced its intention to increase existing incentives (tax and other incentives) for e-commerce businesses in order to encourage the establishment of regional offices in Thailand.

The upcoming adoption of the IT 2010 Policy drafted by NECTEC will also assist Thailand in moving towards an IT knowledge-based economy by focusing on five main issues: e-industry, e-commerce, e-government, e-education, and e-society. Finally, the government is also drafting an e-government master plan to provide guidelines for government departments and agencies as they develop their online services.

Thailand’s government is pointed in the right direction to ensure that Thailand’s e-commerce will be on par with that of other countries. However, while other countries have charged forward in the protection and development of their e-commerce, Thailand has been plagued by one delay after another. Nevertheless, we should witness significant changes in the next few years with the new government’s commitment to increasing Thailand’s competitiveness in the IT sector.

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