

ASEAN E-COMMERCE LEGAL FRAMEWORK – TOWARDS THE DEVELOPMENT AND PROSPECTS

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Abstract

Information and Communication Technology and e-commerce are recognized as an important tool for the regional integration for ASEAN. By this recognition, ASEAN developed its legal framework in order to promote and facilitate the development of ICT and the growth of e-commerce within the region. Unlike the European Union, ASEAN is not a supranational organization and it cannot legislate for the whole community. Therefore, this study aims to investigate how ASEAN develops its regional legal system, in particular, the legal framework for its integration of e-commerce sector, and how ASEAN envisages its legal framework in order to govern and facilitate e-commerce transactions in the region in future. The study also introduces e-commerce law at an international level, especially of the United Nations and of the European Union, to help understand international perspectives on e-commerce law. In addition, this study presents the organization of ASEAN to introduce the structure of ASEAN and how it is similar to and different from the European Union.

The result of the study shows that ASEAN legal framework is addressed through non-binding standards. It developed the e-commerce legal framework by harmonizing of the Member Countries' national laws into the regional legal system. To further develop a comprehensive legal framework, ASEAN adopted a multilateral agreement on e-commerce, and it will become a binding legal instrument of ASEAN upon the deposit of the ratification instruments by the Member Countries. Similarly, the certain aspects of the EU e-commerce law are also practised by a harmonized infrastructure by means of the directive, while the UNCITRAL adopted model laws to only encourage national legislators to adopt their national laws.

Keyword: ASEAN, e-commerce, legal framework, legal development, legal harmonization, agreement on e-commerce, UNCITRAL, the EU.

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INTRODUCTION

E-commerce is a radically new way of conducting commercial activities, and it is potentially a significant driver to increase economic growth and strengthen development around the world. The e-commerce growth has profound implications on almost all aspects of our society and life, which has recently called for a new legal framework, both at global and regional levels, in order to better regulate the commercial transactions carried out through the use of the internet. Indeed, the rapid growth of the use of the internet for commercial activities worldwide has pushed lawmakers, both at the national and international level, to adopt new laws and regulations to govern e-commerce and promote its development. However, it is not possible for a single state to completely regulate e-commerce. Therefore, in order to harmonise the existing rules and establish legal environment to facilitate e-commerce, cooperation amongst States and international organisations is necessary.

1. E-commerce Law in International Scenario

In all regions of the world, e-commerce is growing, and it has offered new opportunities for business and citizens. E-commerce is an essential engine for the world economic growth in the 21st century, increase productivity across sectors of our economies, further promote both trades in goods and service and investment, and it creates new jobs, new sectors of activities, new forms of marketing and selling, and new revenue streams.

In June 1996 a Model Law on Electronic Commerce was adopted by the United Nations Commission on International Trade Law (UNCITRAL) and it was, by passing a resolution, further adopted by the General Assembly of the United Nations on 30th January 1997, in order to facilitate the use of electronic means of communication and storage of information. It is generally known as the first legislative text adopting the fundamental principle of e-commerce. The main purpose of the Model Law on Electronic Commerce was to bring uniformity in national laws regarding e-commerce. To that end, the Model Law on Electronic Commerce was drawn to encourage national legislators to adopt a set of internationally acceptable principles for validation of e-commerce, and to provide equal treatment to the use of paper-based documentation and computer-based documentation or information.

After the Model Law on Electronic Commerce in 1996, later a Model Law on Electronic Signatures was adopted by UNCITRAL in 2001. It is the form of a legislative text aiming to provide legal recognition to electronic signature and encourage national legislators to adopt their national laws regarding electronic signature. Subsequently and indirectly relating to e-commerce, United Nations Convention on the Use of Electronic Communications in International Contracts was adopted in 2005 and entered into force in 1st March 2013 intending to facilitate the use of electronic means of communication in international contracts by ensuring the conclusion of contract and any other communication transacted electronically to be valid and enforceable as the paper-based equivalent.

At the moment, the two UNCITRAL Model Laws directly concerning e-commerce and the UN Convention indirectly concerning e-commerce as mentioned above are the main legislative text relating to e-commerce law in the international scenario.

2. E-commerce Law in EU Scenario

Growth of internet integration in the European Union is increasing at a steady step. E-commerce is considered as a dynamic economic area of the European Union, and in 2017, e-commerce turnover of the EU increased by 12.75% to Euro 540 billion.

In 1997, the European Initiative in Electronic Commerce was placed, and in April of the year, the European Commission adopted an electronic commerce policy paper aiming to promote the e-commerce growth in Europe, enhance the industry competitiveness in Europe, and ensure the benefit of business and consumers from global information networks. To that end, within a context of international cooperation and dialogue, the European Initiative in Electronic Commerce intended to ensure the access to the global marketplace; establish a legal framework; and promote a business environment. In May 1997, a Distance Selling Directive has been adopted by the European Union in order to protect consumers, where the certain minimum requirements regarding e-commerce such as the providing of specific information and a seven-day cooling-off period in favour of customers were laid down. By this initiative, The European Union had commenced its effort in order to establish a harmonized e-commerce legal framework within Europe by the year 2000, and an Electronic Signatures Directive and an Electronic Money Directive were adopted and enacted by the EU and were transposed into laws of member states.

Within the EU, the certain aspects of electronic commerce law are practised by a harmonized infrastructure by means of the directive. In 2000, The Electronic Commerce Directive 2000/31/EC was adopted creating an Internal Market framework for e-commerce which lays down legal certainty for online business and consumers. The Directive has established a basic legal framework for e-commerce in the Internal Market aiming to facilitate cross-border online services in the EU and provide legal certainty in cross-border online transactions to business and citizens.

The Directive creates harmonized rules on issues relating to e-commerce and also increase administrative cooperation on e-commerce among the Member States and enhance the role of self-regulation.

In 2015, the EU placed an ambitious goal to create a Digital Single Market. Its primary aim is to enhance better access for consumers and businesses to e-commerce, in particular, online goods and services across the EU. By this effort, a considerable amount of enforcement and legislative at the EU level for cross-border e-commerce as a significant area for the achievement of the Digital Single Market attracts attention. And at the moment, E-commerce of the EU is primarily regulated by the Electronic Commerce Directive 2000/31/EC. And also, other legislative instruments that are either related to digital economy such as the Data Protection Regulation (EU) 2016/679, Electronic Identification and Trust Services Regulation (EU) No 910/2014 and Consumer Rights Directive 2011/83/EU) apply to the practical aspects of e-commerce.

3. E-commerce Law in ASEAN Scenario

ASEAN is one of the most internet-used regions globally. As of June 2018, ASEAN has more than 350 million internet users and on average spend 4 hours on the mobile internet daily – more than anyone other countries in the world. More than 50% of ASEAN's population is a young generation of age under 30 and they have a greater attraction for technology and internet-based transactions. ASEAN raised more than USD72 billion in 2018, and the ASEAN internet economy is estimated to reach USD240 billion by 2025.

E-commerce in ASEAN is growing rapidly. ASEAN considers e-commerce as a significant contributor to economic growth and regional integration. By this recognition, ASEAN has developed a legal framework to support the e-commerce growth in the region. Recently, a public-private sector advisory body was established by ASEAN aiming to develop a broad-based and comprehensive action plan toward evolving an ASEAN e-community.

In the e-commerce legal aspect, ASEAN has continued its effort to develop its ASEAN-way legal framework in order to govern e-commerce in the region. The ASEAN Member Countries have started to work together for establishing a legal environment to promote e-commerce growth for years. Its first initiative regarding e-commerce legal development is by adopting ASEAN Vision 2020 in 1997, then followed by numbers of action plan introducing legal initiatives concerning e-commerce. To that effort, ASEAN developed a legal framework to facilitate the e-commerce development by harmonizing relevant laws and regulations of the ASEAN Member Countries. ASEAN is the first developing region to prepare harmonized e-commerce legal framework. Its legal harmonization consists of the common objective and principles for e-commerce laws.

Furthermore, ASEAN recently adopted an ASEAN Agreement on e-Commerce in order to deepen e-commerce legal cooperation and promote e-commerce growth in the region. It is a significant signal for prospects of ASEAN e-commerce legal framework for the integration of e-commerce.

ORGANIZATION OF ASEAN

ASEAN is a regional organization of the South East Asian countries. It was established on 8th August 1967 with the signing of the ASEAN Declaration in Bangkok, Thailand (also known as Bangkok Declaration). ASEAN was found by its five Father States – namely Thailand, Singapore, Indonesia, Malaysia and the Philippines. After that, Brunei Darussalam joined ASEAN on 7 January 1984 and followed by Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, and today ASEAN consists with ten Member States.

Similar to the European Union, ASEAN was established to promote regional cooperation among its Member Countries with aims and purpose for regional peace and stability, and social-economic development. However, the EU was established with the aim for ending the frequent wars within Europe, while ASEAN was established aiming for resolving a territorial dispute within

ASEAN where each member had such dispute with at least one of their neighbouring countries, yet it kept those issues aside and focused on economic cooperation.

1. Legal Personality of ASEAN

Unlike the European Union, ASEAN is not a supranational organization nor a sovereign organization. ASEAN is an inter-governmental organization, grouping by sovereign states of the South East Asia region. It is carefully designed in a way that the ASEAN Charter is only the confirmation of the legal fact that ASEAN is an inter-governmental organization with legal personality, and it must be acknowledged that ASEAN has already enjoyed the personality under international law before the Charter was born. Thus, this does not mean that ASEAN previously lacked international legal personality, nor that it possesses the personality in any specific way now.

ASEAN's capacity to enter into relations with other States or organizations and their competence to conclude treaties under international law has been affected by its legal personality as an inter-governmental organization. The ASEAN's legal personality given by Article 3 of the Charter is to help to support external understanding of ASEAN as a political actor on the international stage even if the absolute nature of its legal character may remain unclear. It is true that the substance of ASEAN's competence under international law is not altered by the ASEAN Charter.

As ASEAN is an inter-governmental organization, it so cannot be a party to an international agreement. It largely depends on its constituent instruments to determine its legal personality and powers. The CAFTA FA can be the example to confirm that ASEAN cannot be a party to an international agreement. Arguably, along with the conclusion of political engagements for strengthening ASEAN's institutional character, the parties' subsequent conducts are an indicator that ASEAN is an inter-governmental organization with some power. Nevertheless, there are no instruments providing absolute legal personality to ASEAN nor providing treaty-making power to the organization.

ASEAN rejects being supranational organization like the European Union, thus the ASEAN's legal framework is largely based on a regime of the international legal framework. ASEAN does not have a formal structure with supranational law-making power that can issue legal instruments binding for the Member States. It is unlike the European Union that has the European Parliament as a legislative body of the Union and the European Parliament has the power to legislate for the Union as a whole, as well as the power to veto budgets and appointments.

2. Structure of ASEAN

The present structure of ASEAN consists with eight organs: 1) ASEAN Summit; 2) ASEAN Coordinating Council; 3) ASEAN Community Councils; 4) ASEAN Sectoral Ministerial Bodies); 5) Secretary-General of ASEAN and ASEAN Secretariat; 6) Committee of Permanent Representatives to ASEAN; 7) ASEAN National Secretariats; ASEAN Human Right Body; And 8) ASEAN Foundation.

The ASEAN Summit is the supreme decision-making body of ASEAN where the head of governments is to meet twice annually. The ASEAN Summit is the body that provides policy guidance and makes a decision on key issues of ASEAN and matters of interest of Member States. It may also instruct the relevant Councils to organize ad hoc inter-Ministerial Meeting; address important issues concerning ASEAN; address emergency situation affecting ASEAN; and decide on the matter of decision-making and settlement dispute. It may also be considered as a final arbiter on matters concerning the failure to achieve a consensus and settlement of disputes between ASEAN member states.

The ASEAN Coordinating Council is an organ comprising the ASEAN Foreign Ministers where the ASEAN Foreign Minister meets at least twice a year. It prepares the meetings of the ASEAN Summit; coordinate the implementation of agreement and decision of the ASEAN Summit, the report of the ASEAN Community Councils to the ASEAN Summit; coordinate with the ASEAN Community Councils to strengthen policy coherence, efficiency and cooperation among them; consider the reports of the Secretary-General; approve the appointment and termination of the Deputy Secretaries-Genera; and undertake other tasks assigned by the ASEAN Summit.

The ASEAN Community Councils is one of the important organs of ASEAN. The ASEAN Community Councils has functions to ensures the implementation of the decisions of the ASEAN Summit; and under its purview, it coordinates the work of different sectors and on matters cut across the other Community Councils, and it reports and recommends matters under its purview to the ASEAN Summit. The ASEAN Community Councils consists of three community councils – ASEAN Political-Security Community Council, ASEAN Economic Community Council, and Socio-Cultural Community Council and each council meets at least twice a year.

The ASEAN Sectoral Ministerial Bodies is a principal organ of ASEAN to implement the agreements and decisions of the ASEAN Summit, to function in accordance with their respective established mandates, to enhance cooperation in their respective areas in support of ASEAN integration, and submit reports and recommendations to their respective Community Councils.

The Secretary-General of ASEAN and ASEAN Secretariat is an organ that acts as a central administrative organ for ASEAN. ASEAN Secretariat consists of the Secretary-General and staffs. The Secretary-General of ASEAN is appointed by the ASEAN Summit for a non-renewable term of office of five-years. The Secretary-General has key functions to facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit report regarding ASEAN's work to the ASEAN Summit; to participate in meeting of the ASEAN Summit, the ASEAN Coordinating Council, and ASEAN Sectoral Ministerial Bodies and other ASEAN meetings; and participate in meeting and present the view of ASEAN to external parties. The Secretary-General is assisted by four Deputy Secretaries-General who are responsible for the Secretary-General in carrying out their functions.

The Committee of Permanent Representatives to ASEAN comprises a permanent representative (with the rank of ambassador) from each ASEAN Member State to be based in

Jakarta. The Committee of Permanent Representative of ASEAN is a body that Representatives serves as a key interface among various national ASEAN secretariats, the Community Council and the Coordinating Council. It supports the work of the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies, coordinate with ASEAN National Secretariats, liaise with the Secretary-General of ASEAN and the ASEAN Secretariat, facilitates ASEAN cooperation with external partners, and perform other tasks assigned by the ASEAN Coordinating Council.

The ASEAN National Secretariats serves as the national focal point of ASEAN and serve as the repository of information on all matters concerning ASEAN at the national level. It also coordinates the implementation of ASEAN decision at the national level, coordinates and support the national preparation of ASEAN meetings, promotes ASEAN identity and awareness at the national level, and contribute to ASEAN building.

The ASEAN Human Right Body is a body with the purpose of promoting and protecting human rights and fundamental freedoms in ASEAN, in conformity with the purpose and principles of the ASEAN Charter in which the term of reference for its operations are determined by the ASEAN Foreign Ministers Meeting (the ASEAN Coordinating Council).

The ASEAN Foundation is another organ of ASEAN that support the Secretary-General of ASEAN and coordinate with the other ASEAN bodies to support ASEAN building through promoting ASEAN identity and awareness, people-to-people interaction, civil society, academia, close collaboration among the business sector, and other stakeholders in ASEAN. It is responsible to the Secretary-General of ASEAN that has a duty to submit its report, thought the ASEAN Coordinating Council, to the ASEAN Summit.

E-COMMERCE LEGAL DEVELOPMENT OF ASEAN

The industrialization of ASEAN has been rapidly driven by the Information and communication technologies (ICT) revolution from the 1970s. ASEAN has considered ICT as a key priority for its regional integration. By adopting ASEAN Vision 2020 in 1997, ASEAN set forth the initiative on ICT development. Under the ASEAN Vision 2020, ASEAN Member States resolved to accelerate the development of science and technology including information technology by establishing a regional information technology network and centres of excellence for the dissemination of and easy access to data and information. Among others, the ASEAN Vision 2020 aims to make ASEAN economic region highly competitive, stable and prosperous in order to foster the free flow of goods, services, capital and investments, as well as promote the equitable economic development and reduce poverty and socio-economic disparities within ASEAN by the year 2020.

After the adoption of the ASEAN Vision 2020 and in order to achieve its goals, ASEAN has commenced its effort to establish an e-commerce legal framework aiming to promote e-commerce development within the region. The Hanoi Plan of Action was launched and follow with endorsing e-ASEAN initiative intending to foster socio-economic development and

employment; strengthen information and news worldwide access; provide better government services and promote better governance; and to foster cross-border business and networks. The e-ASEAN initiative introduced a series of action plan focusing on the legal framework. It has been a significant plan of action of ASEAN to develop e-commerce legal framework and encourage member countries to develop their domestic laws and regulations on e-commerce. The development of e-commerce law of ASEAN can be seen through its plans of action including: Hanoi Plan of Action; E-ASEAN Initiative and e-ASEAN Framework Agreement; Reference Framework for E-commerce Legal Infrastructure; ASEAN FTAs.

1. Hanoi Plan of Action

For several months after the adoption of ASEAN Vision 2020 in 1997, The Hanoi Plan of Action was launched. The Hanoi Plan of Action was established to realize the ASEAN Vision 2020 in order to implement the long-term vision. The Hanoi Plan of Action is the first in a number of plans of action building up to the realization of the goals of the ASEAN Vision 2020. The aims of the Hanoi Plan of Action are to strengthen macroeconomic and financial cooperation; enhance greater economic integration; promote science & technology development and development information technology infrastructure; promote social development and address the social impact of the finance and economic crisis; promote human resource development; protect the environment and promote sustainable development; strengthen regional peace and security; enhance ASEAN's role as an effective force for peace, justice, and moderation in the Asia-Pacific and in the world; promote ASEAN awareness and its standing in the international community; and improve ASEAN's structures and mechanisms.

In respect of e-commerce, under the aim of enhancing greater economic integration, the Hanoi Plan of Action encourages ASEAN member countries to create policy and legislative environment to facilitate cross-border e-commerce; to ensure the coordination and adoption of framework and standards for cross border e-commerce, which is in line with international standards and practices; and to encourage technical cooperation and technology transfer among Member States in the development of e-commerce infrastructure, applications and services. The Hanoi Plan of Action was the first significant remark on e-commerce legal development of ASEAN.

2. e-ASEAN Initiative and e-ASEAN Framework Agreement

On 28 November 1999, the e-ASEAN initiative was endorsed by the ASEAN leaders at their Summit Meeting in Manila, the Philippines. A high-level public-private sector advisory body was also established to develop a broad-based and comprehensive action plan concerning evolving an ASEAN electronic marketplace. For better integration of ASEAN in the global information economy, the e-ASEAN initiative intends to implement Member Countries' national ICT strategies and to foster economic growth and competitiveness. Under the e-ASEAN initiative, a broad-based and comprehensive action plan was mandated to develop in order to identify necessary physical, legal, logistical, social and economic infrastructure required to foster an ASEAN e-space as part of an ASEAN branding and positioning strategy.

After years of e-ASEAN initiative, the ASEAN entered into the e-ASEAN Framework Agreement on 24th of the November 2000 in order to promote cooperation to develop, strengthen and enhance the competitiveness of the ICT sector in ASEAN; to promote cooperation to reduce the digital divide within individual ASEAN Member States and among ASEAN Member States; to promote cooperation between the public and private sectors in realizing e-ASEAN; and to promote the liberalization of trade in ICT products, ICT services and investments to support the e-ASEAN initiative. To that end, the e-ASEAN Framework Agreement consists elements focusing on the development of an e-commerce legal and regulatory infrastructure to foster the competitiveness of ASEAN industries and businesses, and establishment of the ASEAN information infrastructure by establishing the national infrastructure and strengthening the connectivity among the Member Countries.

In the respect of an e-commerce legal development, through the e-ASEAN Framework Agreement, Member Countries shall adopt their domestic e-commerce law and regulatory framework that establish trust and confidence for consumers and facilitate the businesses transformation towards the development of e-ASEAN, where the e-ASEAN Framework Agreement provides that Member Countries shall:

2.1 expeditiously put in place national laws and policies relating to electronic commerce transactions based on international norms;

1) facilitate the establishment of mutual recognition of digital signature frameworks;

2) facilitate secure regional electronic transactions, payments and settlements, through mechanisms such as electronic payment gateways;

3) adopt measures to protect intellectual property rights arising from e-commerce. Member States should consider the adoption of the World Intellectual Property Organization (WIPO) treaties, namely: “WIPO Copyright Treaty 1996” and “WIPO Performances and Phonograms Treaty 1996”;

4) take measures to promote personal data protection and consumer privacy; and

5) encourage the use of alternative dispute resolution (ADR) mechanisms for online transactions.

By the adoption of the above measures, the development of e-commerce legal framework of ASEAN has been positive. Along with the assistance of UNCTAD and AusAID/ASEAN projects, more electronic transactions laws of the ASEAN Member Countries were adopted.

3. Reference Framework for E-commerce Legal Infrastructure

To enhance the e-commerce legal development within the region, ASEAN regulators have agreed to develop non-binding regulatory models on e-commerce. The regulatory models serve as approaches and guidelines for the ASEAN Member States to use as a common reference

to develop new legal and regulatory instruments or to create their respective legal and regulatory system and processes.

After entering into the e-ASEAN Framework Agreement, in 2001 ASEAN developed the e-ASEAN Reference Framework for E-commerce Legal Infrastructure intending to provide a guide for helping ASEAN member states that at that time did not have any e-commerce laws in place to draft their own and also helping ASEAN member states that already have e-commerce laws in place to achieve cross-border e-commerce and the cross-recognition/cross-certification of digital certificates/digital signatures. This e-ASEAN Reference Framework for E-commerce Legal Infrastructure was developed by consultation of the legal experts from Singapore, Malaysia, Philippines, Thailand and Brunei which based on the e-commerce laws of these Member States – Electronic Transaction Act (Singapore), Digital Signature Act (Malaysia), Electronic Commerce Act (Philippines), Draft Electronic Transaction Bill (Thailand), and Electronic Transaction Order (Brunei). In turn, the e-commerce laws of the Member States used as a model for developing the e-ASEAN Reference Framework for E-commerce Legal Infrastructure are largely based on UNCITRAL Model Law on Electronic Commerce and Draft Model Law on Electronic Signature, and also the e-commerce and electronic signature laws of the US (Utah, Illinois), and the EU (Germany).

The framework is a remarkable regulatory model of ASEAN in order to support Member Countries to develop their e-commerce law and regulations. It outlines general principles for e-commerce law which Member Countries must adopt in their domestic law. Key features of the general principles provided by the framework are:

- 1) They should conform to international standards such as UNCITRAL's Model Law on Electronic Commerce and Draft Model Law on Electronic Signatures to be interoperable with similar laws of other countries;
- 2) They should be transparent and predictable so that there is no legal ambiguity between transacting parties in an electronic transaction;
- 3) They should be technology-neutral, with no discrimination between different types of technology;
- 4) They should be media neutral, that is, paper-based commerce and e-commerce are treated equally under the law.

Furthermore, the minimum provisions required to be contained in Member Countries' draft laws and regulations on e-commerce are stated by the framework. It provides that e-commerce laws should contain provisions on: electronic transactions; normal rules of contracts should apply equally to transactions online; the legal effect of using electronic records and electronic signatures; presumptions regarding the reliability of electronic records and electronic signatures; duties of trusted third parties and certification authorities, and relevant rules so; and the extent of legal liability for service providers.

4. ASEAN FTAs

ASEAN has developed a framework for economic integration over a decade and its framework for economic integration comprises of several layers of agreements and declarations. Moreover, ASEAN has strong external relationship with its dialogue partners for trade facilitation by entering into numbers of Free Trade Agreements, namely, ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), ASEAN-Japan Comprehensive Economic Partnership (AJCEP), ASEAN-India Free Trade Area (AIFTA), ASEAN-China Free Trade Agreement (ACFTA), and ASEAN-Korea Free Trade Area (AKFTA).

By entering into the Free Trade Agreements, significant e-commerce legal development was introduced in ASEAN. However, only AANZFTA provides more detailed provisions on e-commerce. AJCEP, AIFTA, ACFTA, and AKFTA do not include specific provisions on e-commerce, they only identify e-commerce as a sector in which parties could strengthen the cooperation.

The AANZFTA created a framework for cooperation and coordination on e-commerce. Provisions on e-commerce are covered in Chapter 10 of the Agreement. Provisions on e-commerce under AANZFTA aim to promote e-commerce between the parties, to promote the wider use of e-commerce globally, and to enhance cooperation between the parties in order to foster the development of e-commerce. The AANZFTA remarked a significant e-commerce legal framework for ASEAN. It requires the parties to adopt domestic law and regulations governing electronic transactions which is a driving force for e-commerce legal development within ASEAN. Under the terms of FTA, the parties, especially ASEAN member states that do not have any e-commerce law, shall adopt domestic laws and regulations that will govern electronic transaction taking into account the UNCITRAL 1996 Model Law on Electronic Commerce measures based on international standards for electronic authentication.

Further, the AANZFTA stipulates that each party shall provide protection for e-commerce consumers, protect the personal data of the e-commerce users, and work on the implementation of initiatives providing paperless trading. It also provides provisions on paperless trading, whereby the parties undertake to make documents of trade administration available in the electronic form to the public and to recognize documents transmitted electronically as a legal equivalent of the paper version, taking into account principles recognized by international organizations such as the World Customs Organization. Also, in strengthening the promotion and development, the parties of AANZFTA have undertaken to encourage cooperation in the form of research and training on electronic commerce.

PROSPECTS OF E-COMMERCE LAW OF ASEAN

By the recognition of the potential of ICTs, ASEAN Member States have taken actions to move forward e-commerce legal development in order to promote e-commerce growth and facilitate cross border e-commerce. They have made great progress in introducing e-commerce

legal framework and keep remain potential for the legal framework for regional integration of e-commerce sector in ASEAN.

ASEAN Member Countries have a different legal background and legal system, especially when it comes to ICT. Therefore, ASEAN has developed a legal framework for the integration of e-commerce sector by the way of legal harmonization. And by adopting the ASEAN ICT Masterplan 2015 in 2011, ASEAN has clear action plans for regional economic growth considering ICT as a key driver for social and economic growth by 2015. The Masterplan, in support of some other initiatives, envisages the establishment of harmonized e-commerce law in ASEAN. It contributes to e-commerce legal development by urging Member Countries to lay down the legal framework and policy for e-commerce and enable e-commerce within ASEAN through the implementation of the e-ASEAN Framework Agreement and based on common reference frameworks.

1. Legal Harmonization

At the moment, ASEAN does not have a legal superstructure to establish a unified regime that could support regional e-commerce, unlike the European Union that has its absolute community legal structure. ASEAN has developed e-commerce legal framework by harmonizing of the Member Countries' national laws into a regional legal system that respects cultural sensitivities and national sovereignty. Consequently, the e-commerce legal support of ASEAN depends upon the adoption of a common reference framework that serves as legal templates providing a guide for helping ASEAN Member States enacting their domestic laws and regulations on e-commerce in the respective ASEAN jurisdictions.

In respect of the region's aim of economic integration, ASEAN has made progress towards legal harmonization within the region. In particular integration of e-commerce, ASEAN has been pioneering the preparation and implementation of a harmonized e-commerce legal framework consistent across jurisdictions and the ASEAN Countries must enact laws to govern e-commerce and ensure that the laws are regionally harmonized. Previously, only four ASEAN Countries – Malaysia, Philippines, Singapore and Thailand – have law covering e-commerce, based largely on the model suggested by the UNCITRAL. By e-ASEAN initiative together with the assistance of AusAID/ASEAN project and UNCTAD from 2004 to 2009, four new electronic transactions laws – of Indonesia, Vietnam, Brunei and Myanmar – were implemented. In 2012, a law on electronic transactions of Lao PDR was also implemented. Cambodia is the only ASEAN Member Country that does not have a law on electronic transactions, however, Cambodia is still working on its first e-commerce law.

By the legal harmonization, ASEAN has made great progress in the development of e-commerce legal framework within ASEAN in order to strengthen e-commerce in ASEAN and to achieve its Roadmap for Integration of the e-Commerce Sector as part of the e-ASEAN Framework Agreement. The e-commerce legal harmonization of ASEAN focused more on electronic transactions laws and less on other cyber laws. The e-commerce legal harmonization will drive

development and further the ASEAN regional integration in the world of ICTs age and establish an enabling legal environment that will foster its e-commerce development.

2. ASEAN Agreement on e-Commerce

ASEAN consider e-commerce as a powerful enabler for businesses to gain access to international markets. For ASEAN, the benefits of e-commerce are more than just creating trade and business opportunities, but social cohesion and the overall regional economic development are also strongly involved, which are significant elements for its regional integration. In recognition of this, and in line with the ASEAN Economic Community (AEC) Blueprint 2025 and build upon Article 5 (Facilitation of the Growth of Electronic Commerce) of the e-ASEAN Framework Agreement signed by ASEAN Leaders in 2002, the ASEAN Work Programme on E-commerce was launched in November 2017 which calls on ASEAN to strengthen coordination and cooperation on e-commerce by establishing an ASEAN Agreement on e-Commerce to facilitate cross-border e-commerce transactions in ASEAN. The ASEAN Economic Ministers endorsed the Agreement at the 50th ASEAN Economic Ministers Meeting on 29 August 2018 and the Agreement was signed by the ASEAN Economic Ministers on 12 November 2018, on the side-lines of the 33rd ASEAN Summit and Related Meetings.

The ASEAN Agreement on e-Commerce intends to increase the use of e-commerce in order to enhance economic growth and social development in ASEAN. The main objectives of the Agreement are to: facilitate cross border e-commerce transaction in ASEAN; contribute to establishing a trust and confidence environment in the use of e-commerce in ASEAN; and tighten cooperation to further develop and enhance the e-commerce ASEAN. Under the ASEAN Agreement on e-Commerce, ASEAN Member Countries undertake to work together to establish an environment facilitating cross border e-commerce transactions in the region. This includes advancing the legal framework in e-commerce and establish greater digital connectivity across the ASEAN region.

The ASEAN Agreement on e-Commerce is a further significant move of e-commerce law of ASEAN. By adopting the ASEAN Agreement on e-Commerce, ASEAN Member States undertake to maintain or adopt laws and regulations governing electronic commerce taking into account adopted international model law, conventions, principles or guidelines relating to e-Commerce as soon as practicable. This will flourish the development of a legal environment for e-Commerce in each Member State and in the ASEAN as a whole. And the entry into force of the Agreement would establish a very important legal framework for integration of e-commerce sector of ASEAN in the age of ICT.

CONCLUSION

ASEAN is a regional inter-governmental organization with eight organs. Likely the European Union, it was established to promote regional cooperation with the purpose for regional peace, stability, and socio-economic development. However, there are differences between

ASEAN and the European Union in their legal personality. The European Union is a supranational organization with a legislative body that can legislate and enter into agreements for the Union as a whole. On the other hand, ASEAN, as an inter-governmental organization, does not have any supranational authority that can legislate binding laws and enter into agreements for ASEAN as a whole. In this regard, ASEAN may face a lack of regional legal instruments to drive a strong integration of the region.

ASEAN is now one of the most internet-used region globally. By this potential, the use of e-commerce in ASEAN grows rapidly. And in order to strengthen e-commerce growth and, ASEAN has developed e-commerce legal framework to govern the e-commerce and facilitate cross border e-commerce in the region. The ASEAN e-community was introduced after it adopted the ASEAN Vision 2020, and it presented numbers of the action plan introducing e-commerce legal framework initiatives. Although ASEAN has made great progress of the legal framework for promoting e-commerce, so far it has not reached its goals. The e-commerce legal framework remains far behind since ASEAN does not have any supranational authority to force the relevant legal development.

Since the ASEAN Member Countries have a very different legal background and system. Therefore, the current e-commerce legal framework of ASEAN is established in the form of legal harmonization among the Member Countries. By this framework, ASEAN Member Countries must enact laws to govern e-commerce and make the laws regionally harmonized, through the implementation of the e-ASEAN Framework Agreement and based on a common reference framework. The e-commerce legal harmonization of ASEAN focuses on electronic transactions laws more than any other cyber laws. However, it has not been very successful for ASEAN in regard to e-commerce legal development by the way of legal harmonization. Although five new electronic transactions laws were adopted since it has commenced e-ASEAN initiative or now nine of ten Member Countries have the electronic transactions laws, but Cambodia still have no electronic transactions law. This means ASEAN has not been successful in its e-commerce legal framework development, as not every ASEAN Member Countries have the electronic transactions laws.

To further legal framework development for integration of e-commerce sector, ASEAN newly adopted the ASEAN Agreement on e-Commerce where the ASEAN Member Countries agree to maintain or adopt laws and regulations governing e-commerce in order to foster e-commerce legal environment for better integration of e-commerce in ASEAN. Until now the Agreement has not been deposited the instruments of ratification for entering into force. However, upon the entry into force, the Agreement would be a very great potential for e-commerce legal development in ASEAN.

To this end, ASEAN has made a tremendous regional legal development in respect of the integration of the e-commerce sector.

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