

REPORT ON NATIONAL FRAMEWORK FOR
CONSUMER DISPUTE RESOLUTION IN
CROSS-BORDER E-COMMERCE IN
THAILAND



**REPORT ON NATIONAL FRAMEWORK FOR CONSUMER DISPUTE RESOLUTION
IN CROSS-BORDER E-COMMERCE IN THAILAND**

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Executive summary

Thailand has made steady progress in its transformation to a digital economy. Thailand's e-commerce is one of the fastest growing business sectors in Southeast Asia. ¹ Thailand's e-commerce sector plays a pivotal role in driving the country's economic growth. In 2020, online transactions in Thailand reached nearly US\$ 50 billion, marking a notable increase from the US\$ 33 billion recorded in 2017. ²

In addition to the growth of Thailand's domestic e-commerce landscape, its cross-border online trade also is rapidly increasing. Statistics from 2021 show that approximately one third of Thailand's total e-commerce activity corresponds to cross-border transactions, with a significant demand for Chinese products driving this trend. ³ However, there is still significant untapped potential for Thailand and ASEAN countries. Furthermore, the growing e-commerce landscape has led to a rise in the number of online disputes.

Given the rapid technological advancement and the growth of international e-commerce transactions, the ODR system for consumers is becoming the most viable strategy for dealing with cross-border disputes. ⁴ Moreover, cross-border e-commerce dispute resolution may be crucial for the inclusive growth of e-commerce in Thailand.

This study analyses Thailand's national framework for resolving cross-border consumer disputes in e-commerce. It presents the current state of cross-border business-to-consumer (B2C) e-commerce in Thailand, including growth trends, market characteristics and actors, and existing operating models. It also describes the existing legal and regulatory framework for resolving cross-border consumer disputes, focusing on private international law and consumer protection laws. It examines the institutional framework including judicial and administrative authorities. Finally, the report outlines the situations, systems and approaches to cross-border consumer dispute resolution that are currently in place or under development, focusing on their effectiveness and implementation.

The study concludes that there is room for improvement in Thailand's e-commerce consumer markets, particularly in terms of effective consumer protection. This gap needs to be aligned with the regional direction set by ASEAN, which stresses the importance of strong consumer protection legislation. In addition, the report shows that Thailand's consumer legal framework is fragmented, with numerous overlapping laws, agencies and organizations offering alternative dispute resolution mechanisms. Some private mechanisms have proved effective. Thailand can encourage greater competition among private sector operators, especially online platforms, in providing ODR services to consumers. Regulatory responsibility for these private ODRs could be entrusted to the Office of the Consumer Protection Board or the Electronic Transaction Development Agency.

This report provides policy makers with actionable recommendations that will help to improve cross-border B2C consumer dispute resolution and gives advice to the OCPB on the practical design and updating of the ODR platform. These recommendations are set out in the table below:

¹ e-Economy SEA 2021 report: [e-Economy SEA 2021 | Bain & Company](#).

² Reconnecting ASEAN: The Impact of the COVID-19 Pandemic on Trade, Transport, E-Commerce and the Mobility (2023), https://www.eria.org/uploads/media/Research-Project-Report/RPR-2023-06/9_ch.5-Thailand.pdf.

³ JP Morgan, Local and Cross-Border Insights: Global E-Commerce Trends Report (2021), <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf>.

⁴ E Van den Heuvel; Feasibility Study, see note 72 below; Consumer Trust in the Digital Economy, see note 14 below.

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PUBLIC POLICY INITIATIVES	LEGISLATION	Review and update existing consumer protection laws to take account of the specific features of e-commerce and ensure the compliance and enforcement of these laws.
		Ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.
		Explicitly state that e-commerce is subject to all consumer protection laws and regulations, unless explicitly indicated otherwise, and set clear minimum standards for handling consumer complaints on digital platforms.
	ODR SYSTEMS	Improve the ODR system by improving user interfaces to cater to consumers with different levels of digital literacy.
		Ensure that the ODR system handles disputes efficiently and transparently, prioritizing the protection and security of users data.
		Mandate strict data security standards and offer a variety of payment options, taking into account consumers' preferences.
		Enforce a gatekeeper role and third-party involvement for e-commerce platform providers, holding them accountable for the actions of online sellers on their platforms.
		Assess whether the responsibility and liability regimes for online platforms are commensurate with consumers' interests and the level of involvement of online platforms in the consumer transaction; ensure that consumers and third-party sellers are aware of the responsibility regime that is applicable to their transaction on the online platform.
		Establish mechanisms for distributing complaints to relevant public authorities.
	PROMOTION AND REGULATION OF E-COMMERCE PLATFORMS	Promote e-commerce platforms ODR mechanisms to ensure compliance with minimum legal and regulatory requirements set by the government.
		Encourage healthy competition among these platforms in providing ODR solutions to increase consumer choice while protecting their interests.
	E-COMMERCE REGULATOR	Appoint a regulator to oversee the entire consumer e-commerce ecosystem, including domestic and cross-border activities, and to lead coordination with other government agencies with interests in ODR.
		Empower this regulator to take proactive measures to prevent disputes and ensure compliance with consumer protection laws.
Consider delegating regulatory oversight of private consumer ODRs to the Office of the Consumer Protection Board (OCPB) or the Electronic Transactions Development Agency (ETDA) subject to state approval.		
PRIVATE SECTOR PARTICIPATION	ADOPTION OF ASEAN GUIDELINES	Encourage e-commerce platforms in Thailand to adopt the ASEAN Guidelines on Accountabilities and Responsibilities of E-marketplaces.
	E - COMMERCE PLATFORM ENGAGEMENT	Encourage e-commerce platforms to establish their own ODR systems to promote a fair and trustworthy trading environment.
		Encourage businesses to implement internal complaint handling mechanisms that prioritize speed, fairness, transparency, affordability, and accessibility.
		Subject these ODRs to regulatory oversight to ensure compliance with minimum public policy requirements.

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EMPOWERING CONSUMERS	RAISING CONSUMER AWARENESS	Strengthen educational and awareness campaigns through online and offline channels and applications provided by relevant authorities such as the OCPB and the ETDA.
		Focus on initiatives and campaigns that educate consumers about potential frauds and scams and their rights in e-commerce.
		Explore partnerships with businesses and consumer groups, including consumer associations, to raise consumer awareness.
	ENHANCING DIGITAL LITERACY AND LANGUAGE SKILLS	Enhancing digital literacy and language skills Promote digital literacy and technological skills among e-commerce users, such as consumers and, businesses particularly micro, small and medium sized enterprises, enabling them to make informed decisions and avoid disputes.

Chapter I. Introduction

A. Growing E-commerce⁵ and cross-border potential

Southeast Asia leads the world in e-commerce adoption. As the fastest-growing internet market in the world, the digital economy of the Association of Southeast Asia Nations (ASEAN)⁶ region is projected to grow significantly, adding an estimated US\$ 1 trillion to gross domestic product (GDP) over the next decade.⁷ Between 2015 and 2025, the number of online shoppers in the ASEAN region is projected to triple to 310 million, while the average annual spend of an online shopper in the ASEAN region is expected to increase from US\$ 60 to US\$ 392.⁸ The rapid expansion of e-commerce in Southeast Asia is predominately attributed to rising internet and smartphone penetration rates, a growing population of digital natives, and restrictions imposed by the COVID-19 pandemic.

As one of the fastest developing economies in Southeast Asia and globally, e-commerce is a major driver of Thailand's economy. Online sales in Thailand reached US\$ 49 billion in 2020, compared to US\$ 33 billion in 2017.⁹ By 2021, 15 to 20 per cent of businesses in Thailand – those with ten or more employees – have engaged in e-commerce sales.¹⁰

As Thailand experiences significant growth in domestic e-commerce growth, its cross-border e-commerce is rapidly catching up. Figures for 2021 show that around one third of Thailand's e-commerce volume was cross-border, led by demand for Chinese goods.¹¹ However, given that several aspects of digital development are still underway, Thailand and the ASEAN countries still have significant untapped potential. For example, a recent assessment of digital integration between ASEAN countries and the region identified several areas for improvement, one of the most neglected being Thailand's and ASEAN's "institutional and infrastructural readiness".¹²

⁵ "The sale or purchase of a good or service, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders". E-commerce definition for measurement purposes (OECD, 2009), and [Handbook on Measuring Digital Trade](#), IMF, OECD, UN and WTO.

⁶ Established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the Founding Fathers of ASEAN: Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined ASEAN on 7 January 1984, followed by Viet Nam on 28 July 1995, Lao People's Democratic Republic and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up what is today the ten Member States of ASEAN. See: [asean.org](#).

⁷ World Economic Forum, Digital ASEAN, <https://www.weforum.org/projects/digital-asean> (accessed 12 January 2023).

⁸ Access Partnership, *MSMEs Go Global: Reaching Customers Across Borders with E-commerce* (8 July 2022), <https://accesspartnership.com/msmes-go-global-reaching-customers-across-borders-with-e-commerce/>.

⁹ Reconnecting ASEAN: The Impact of the COVID-19 Pandemic on Trade, Transport, E-Commerce and the Mobility (2023), https://www.eria.org/uploads/media/Research-Project-Report/RPR-2023-06/9_ch.5-Thailand.pdf.

¹⁰ UNCTAD, Measuring E-commerce, https://www.cepal.org/sites/default/files/events/files/l3_measuring_e-commerce_eng.pdf.

¹¹ JP Morgan, Local and Cross-Border Insights: Global E-Commerce Trends Report (2021), <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf>.

¹² Out of 100, Thailand scored 62.61 compared to ASEAN's score of 62.85. ASEAN Digital Integration Index (2021: 60-62). ASEAN, ASEAN Digital Integration Index: Measuring Digital Integration to Inform Economic Policies (2021), <https://asean.org/wp-content/uploads/2021/09/ADI-Report-2021.pdf>.

B. Trust and Consumer Dispute Resolution (CDR) are key to sustainable growth

In the past, it was widely believed that companies had to be sizeable to export. This belief was based on an assumption that international marketing and logistics networks tended to be more accessible to multinational corporations with vast resources and capabilities. However, e-commerce has changed the face of cross-border digital trade for micro-, small- and medium-sized enterprises (MSMEs). As e-commerce enables the creation of new shipping routes, MSMEs can now export at significantly lower costs than before. Thus, MSMEs increasingly recognize that cross-border e-commerce is an essential channel for reaching foreign consumers quickly and easily, thereby opening up a massively larger potential customer base.¹³

But inevitably, as e-commerce grows, so does the number of e-commerce disputes.¹⁴ While large companies and giant e-commerce platforms have the resources to provide in-house consumer complaints and dispute resolution services, MSMEs that do not sell on these platforms often do not have the capacity or capability to provide the same level of consumer service and protection. While in many ASEAN countries, MSMEs account for over 95 per cent of all e-commerce businesses,¹⁵ these companies are at a disadvantage when competing against large platforms and multinational corporations in e-commerce. For instance, two of the seven “*Problem Statements*” identified by the ETDA (2021: 6)¹⁶ as reasons why the growth of Thailand’s e-commerce is inhibited, are related to dispute resolution mechanisms: **1)** a lack of clarity on how to access help when encountering problems during online transactions; and **2)** the prohibitively high costs of e-payment and logistics – both of which typically have built-in dispute resolution mechanisms.¹⁷

In addition to dispute resolution mechanisms, consumer trust is crucial to unlocking the growth potential and competitiveness of e-commerce in Thailand. In this regard, the Thai government issued the “*Thailand E-Commerce Plan 2017-2021*”, as outlined by the ETDA (2021: 7).¹⁸ Evidently, consumer trust is a key facet to both the “*Visions*” and “*Strategies*” of the Plan as a way to increase the volume and value of Thailand’s e-commerce: “*Building trust and good experience*” is highlighted in one of the four Visions for “*E-commerce Standard Development*”. Among its five Strategies for implementing the Visions, “*Strategy 5*” emphasizes the importance of “*Building trust & confidence for consumers (online consumer*

¹³ Access Partnership, supra note 8.

¹⁴ Consumer Trust in the Digital Economy: The Case for Online Dispute Resolution (UNCTAD Research Paper No. 72, UNCTAD/SER.RP/2021/15), https://unctad.org/system/files/official-document/ser-rp-2021d15_en.pdf.

¹⁵ Ibid. With reference specifically to five ASEAN countries: Malaysia, Philippines, Singapore, Thailand and Viet Nam.

¹⁶ Yot Amornkitvikai et al., E-Commerce and Its Development in Thailand: An Empirical Evidence from the Survey on Thailand’s E-commerce, https://asean-competition.org/research/uploads/admin-f88de83727/files/blogs/23092018/batch2/Thailand_Country_Study_Yot_Amornkitvikai_and_Jiraporn_Tangpoolcharoen.pdf.

¹⁷ For instance, the mechanism can be built into the e-commerce platform, e-payment system, or offered by the logistics and delivery services.

¹⁸ Ibid.

protection).” Therefore, the rapid, sustainable and healthy growth of e-commerce depends on consumer dispute resolution and consumer trust working hand in hand.¹⁹ At the regional level, ASEAN has also emphasized the need to enhance consumer protection and adopt a harmonized and unified approach to resolving consumer disputes in light of “the steady increase in cross-border trade within ASEAN.” This has led to the publication of “The ASEAN Alternative Dispute Resolution (ADR) Guidelines for Consumer Protection” (2021).²⁰

C. UNCTAD and Thailand jointly address the knowledge gap

Against this background, and in order to assist member states in enhancing consumer confidence in their respective national e-commerce markets, the United Nations Guidelines for Consumer Protection (UNGCP)²¹ call for collective efforts by governments to ensure “a level of protection that is not less than that afforded in other forms of commerce.”²² Specifically, the UNGCP call for the “development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution (ADR), including for cross-border cases.”^{23, 24} In other words, the UNGCP highlight how the development and implementation of effective mechanisms for CDR²⁵ can provide access to justice and redress.²⁶ This, in turn, can lead to consumer confidence in e-commerce and the wider digital economy, as evidenced in a recently published UNCTAD research report.²⁷

In implementing the Guidelines, one of the ways in which UNCTAD proactively supports its member states in strengthening consumer protection laws and policies is through its

¹⁹ These concerns have also been noted by major industry actors. For example, a report titled “A Vision for Cross-Border E-Commerce in ASEAN” (2020: 9) states: “Trust is a cornerstone in any buyer-seller relationship, but in cross-border e-commerce – where there is great physical distance, no face-to-face interaction, and a greater degree of anonymity – trust becomes even more important. The initiatives in this section seek to promote recognition and build trust in various aspects of ecommerce transactions.” It further notes that the “implementation of e-commerce trust mark can also be an avenue for consumers who wish to seek recourse for disputes arising from products bought from another AMS.” See US-ASEAN Business Council, A Vision for Cross-Border E-Commerce in ASEAN (2022), https://www.usasean.org/sites/default/files/uploads/reports/usabc_e-commerce_study_summary.pdf.

²⁰ ASEAN, The ASEAN Alternative Dispute Resolution (ADR) Guidelines (14 October 2021), <https://aseanconsumer.org/read-news-the-asean-alternative-dispute-resolution-adr-guidelines/>; ASEAN, Dispute Resolution and Redress, <https://aseanconsumer.org/terms-consumer-protection/dispute-resolution-and-redress> (accessed 12 January 2023).

²¹ General Assembly resolution 70/186 of 22 December 2015.

²² Guideline 63, UNGCP (2015).

²³ Guideline 37, UNGCP (2015).

²⁴ Also echoed in Recommendations 43, 45 and Part III put forth by OECD (2016). OECD, Consumer Protection in E-commerce: OECD Recommendation (2016), <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>.

²⁵ For the purpose of this report, CDR includes both ADR and ODR.

²⁶ UNCITRAL Technical Notes on Online Dispute Resolution (2017) defines ODR as a dispute resolution mechanism facilitated by the use of electronic communications and other information and communications technology.

²⁷ Consumer Trust in the Digital Economy, supra note 14.

Voluntary Peer Review mechanism. This periodical exercise, conducted for selected countries, aims to provide an external and independent assessment of the effectiveness of consumer protection laws and policies in a given country.²⁸

Thailand undertook the UNCTAD's Voluntary Peer Review which resulted in the preparation of the Report titled "*Voluntary Peer Review of Consumer Protection Law and Policy of Thailand*" [hereinafter UNCTAD Peer Review].²⁹ Based on Thailand's preference, the Peer Review focused on consumer protection law and domestic CDR. Moreover, this report builds on the foundation laid by the Voluntary Peer Review to further assess the country's national framework for CDR in cross-border e-commerce. This activity is undertaken as part of UNCTAD's DODR Project,³⁰ which focuses on the use of new technologies to enhance consumer confidence in e-commerce and cross-border digital trade.

D. Purpose of the report

This study assesses Thailand's national framework for resolving cross-border consumer disputes in e-commerce. It is based on primary and secondary data collected through interviews, survey questionnaires and desk-based research. The data was analysed quantitatively and qualitatively using a mixed methods approach, including economic and legal analysis. The objectives of this report are: **1)** to assess the current state of cross-border B2C e-commerce in Thailand and ASEAN, including growth trends and potentials, market characteristics and actors, and business and operational models; **2)** to examine the existing legal and regulatory framework for resolving cross-border consumer disputes; and **3)** to map out the landscape, systems and approaches to cross-border CDR that are currently in place or under development, focusing on their effectiveness and implementation.

By identifying and addressing the key challenges and gaps that impede the effective implementation and efficient functioning of cross-border B2C CDR, this report seeks: to provide policymakers with actionable recommendations to help them to improve the implementation of the laws and policies on cross-border B2C CDR; and **2)** to feed usable findings and insights into the practical design and development phase of an ODR platform prototype.

²⁸ Specifically, the Review exercise has three objectives: to analyze the legislative, institutional and public policy frameworks and the enforcement of legislation in order to identify the challenges to be addressed and the areas to be improved in the legislative and institutional frameworks; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; and to formulate and recommend appropriate measures and assisting countries in implementing the recommended measures by developing a capacity-building project.

²⁹ Henceforth and for the purpose of this report, it is referred to as the Voluntary Peer Review of Thailand. See *Voluntary Peer Review of Consumer Protection Law and Policy: Thailand* (UNCTAD/DITC/CPLP/2022/1), <https://unctad.org/webflyer/voluntary-peer-review-consumer-protection-law-and-policy-thailand> [hereinafter UNCTAD Peer Review].

³⁰ An UNCTAD Technical Cooperation Project that aims to be the first step towards the implementation of cross-border B2C ODR in selected beneficiary countries, which to date includes Indonesia and Thailand. It assesses the beneficiaries' needs, benchmarks international best practices, strengthens national capacities and uses emerging technologies like blockchain and artificial intelligence to leapfrog development stages and deliver CDR. See UNCTAD, *Delivering Digital Trading Infrastructure and Online Dispute Resolution for Consumers as Means to Improve International Trade and E-Commerce*, <https://unctad.org/project/delivering-digital-trading-infrastructure-and-online-dispute-resolution-consumers-means> (accessed 12 January 2023).

Chapter II.

Cross-border e-commerce market dynamics

Thailand is experiencing exponential growth in e-commerce. In 2016, despite the high internet access of almost 78 per cent of Thailand's population, e-commerce was used by only 59 per cent of the population. The internet was mainly used for communication, social media, and entertainment purposes, meaning that the number of internet users who never used e-commerce was as high as 41 per cent of the population.³¹ After five years, e-commerce has become the mainstay of Thai shoppers, with 94 per cent of its population having engaged in e-commerce, while Thailand is ranked first among 17 regions worldwide for e-commerce usage.³² With such rapid expansion, there is no doubt that the number of disputes between buyers and sellers would increase significantly. A key factor contributing to this increase in disputes is that e-commerce is relatively new to most sellers and buyers – who have switched from traditional trade to online electronic transactions. Misunderstandings between parties are to be anticipated. Newcomers to the e-commerce market often encounter a steep learning curve when engaging in online transactions. As their window of opportunity expands, so does the potential for disputes.

A. MARKET CHARACTERISTICS

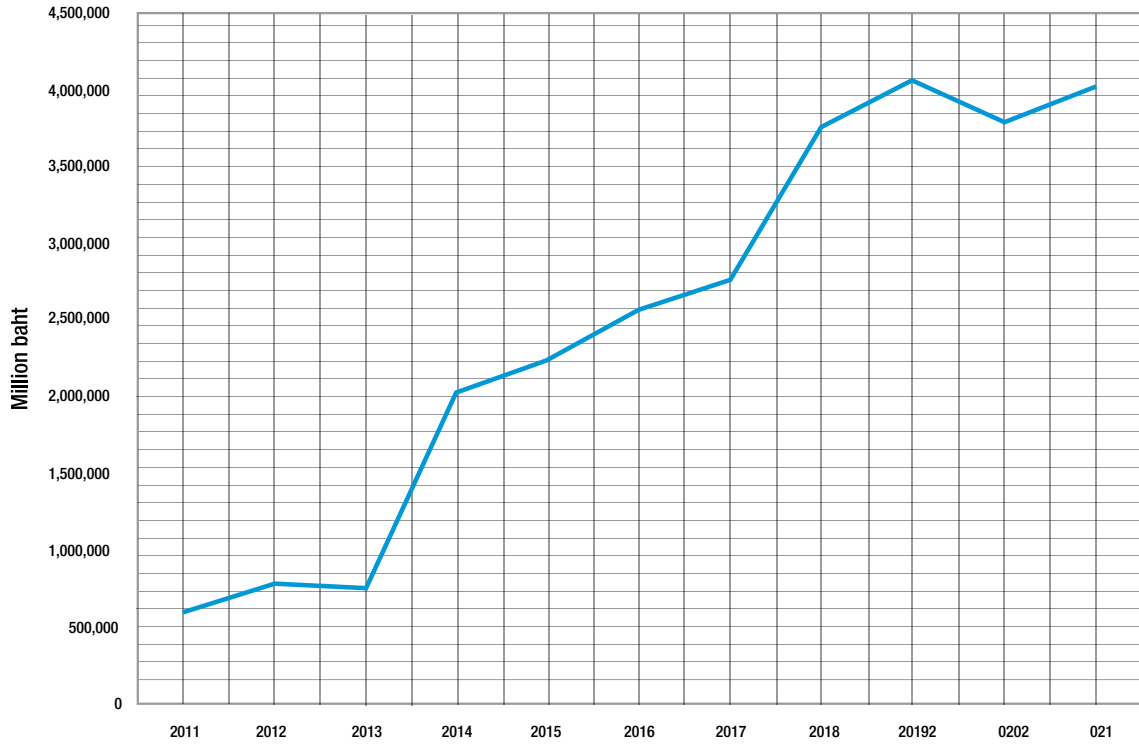
Thailand's e-commerce market was gaining momentum before the onset of the COVID-19 pandemic. Figure 1 shows the structural change when the value of e-commerce suddenly jumped from less than Thai Baht (THB) 1,000,000 million in 2013 to THB 2,000,000 million in 2014, and another structural shift occurred between 2017 and 2018 when e-commerce suddenly increased by around THB 1,000,000 million within one year. Thus, before the COVID-19 pandemic, the e-commerce market in Thailand amounted to almost THB 4,000,000 million. The pandemic slowed down the growth significantly and caused a decline in e-commerce in 2020 before recovering in 2021, when the value stabilized around THB 4,000,000 million.

³¹ NBCT, Survey and Analysis on the Usage of Telecommunication Services in the 3G Era and the Effectiveness of NBCT Policy (Bangkok, The National Broadcasting and Telecommunications Commission of Thailand, 2016); ETDA, Thailand Internet User Profile 2016 (Bangkok: Electronic Transactions Development Agency, 2016).

³² Wunderman Thompson, The Future Shopper 2021 (New York: WPP Plc, 2021).

Figure 1

Value of e-commerce in Thailand



Sources: compiled from ETDA, Value of e-commerce in Thailand 2015, 2016, 2017, 2018, 2019, and 2021.

1. Size of cross-border e-commerce

The Electronic Transactions Development Agency (ETDA) of Thailand reported the proportion of international e-commerce to its total value as shown in Table 1, and therefore, the values of cross-border e-commerce are calculated accordingly.

Table 1 Value of Thailand's e-commerce and its international share

	Total value of e-commerce	International share	Calculated value of cross-border transaction*
	THB MILION	Per cent	THB MILION
2014	2,033,493.36	2.33	47,380.40
2015	2,245,147.02	7.69	172,651.81
2016	2,560,103.36	13.47	344,845.92
2017	2,762,503.22	23.06	637,033.24
2018	3,767,045.45	8.71	328,109.66
2019	4,052,813.54	9.4	380,964.47
2020	3,782,174.26	11.54	436,462.91
2021	4,013,399.13	12.86	516,123.13

Sources: compiled from ETDA, *Value of e-commerce in Thailand 2015, 2016, 2017, 2018, 2019, 2020 and 2021*.

Remark: *Authors' calculation.

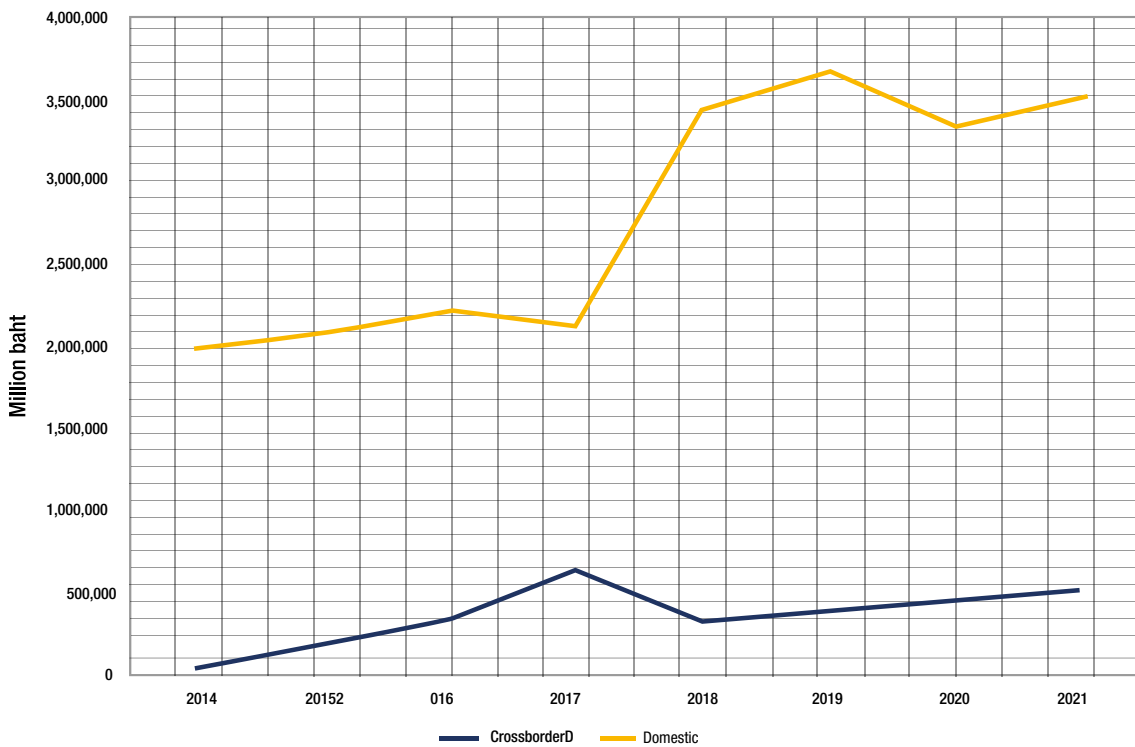
Table 1 shows that the proportion of international e-commerce in Thailand is limited. Only in 2017 did the proportion increase to 23.06 per cent of the total value; this coincided with the second period of rapid growth, indicating the structural change in this market. As reported by several news sources,³³ there was a significant influx of imported products via e-commerce from China in 2017-2018, allegedly due to the strong cooperation between e-marketplace platforms and international delivery service providers making cross-border shipment much easier, as well as many favorable regulations – including the exemption from VAT and customs duties if the value of the imported item is less than THB 1,500, and the

³³ Bangkokbiznews, Chinese Products Flooding to Thai E-commerce: Priceza Shows they Equal 77% on Marketplace, 2 October 2020, <https://www.bangkokbiznews.com/tech/900626>; Prachachat.net, Chinese Products Flooding to Thailand Causing Thai E-commerce to Adjust, 23 December 2018; <https://www.prachachat.net/columns/news-268891>.

exemption from commercial tax since Chinese e-sellers are not registered as companies in Thailand. However, this implies that cross-border e-commerce transactions contributed to the rapid expansion of the e-commerce market between 2017 and 2018. Compared to the first structural leap in 2014, the proportion of international e-commerce was merely 2.33 per cent. The increase in the international share of e-commerce to 11.54 and 12.86 per cent in 2020 and 2021, attests to the market recovery.

Figure 2 shows the dominance of the domestic e-commerce market over the cross-border e-commerce market according to Thailand's calculated values between 2014 and 2021.

Figure 2
Calculated values of domestic and cross-border e-commerce



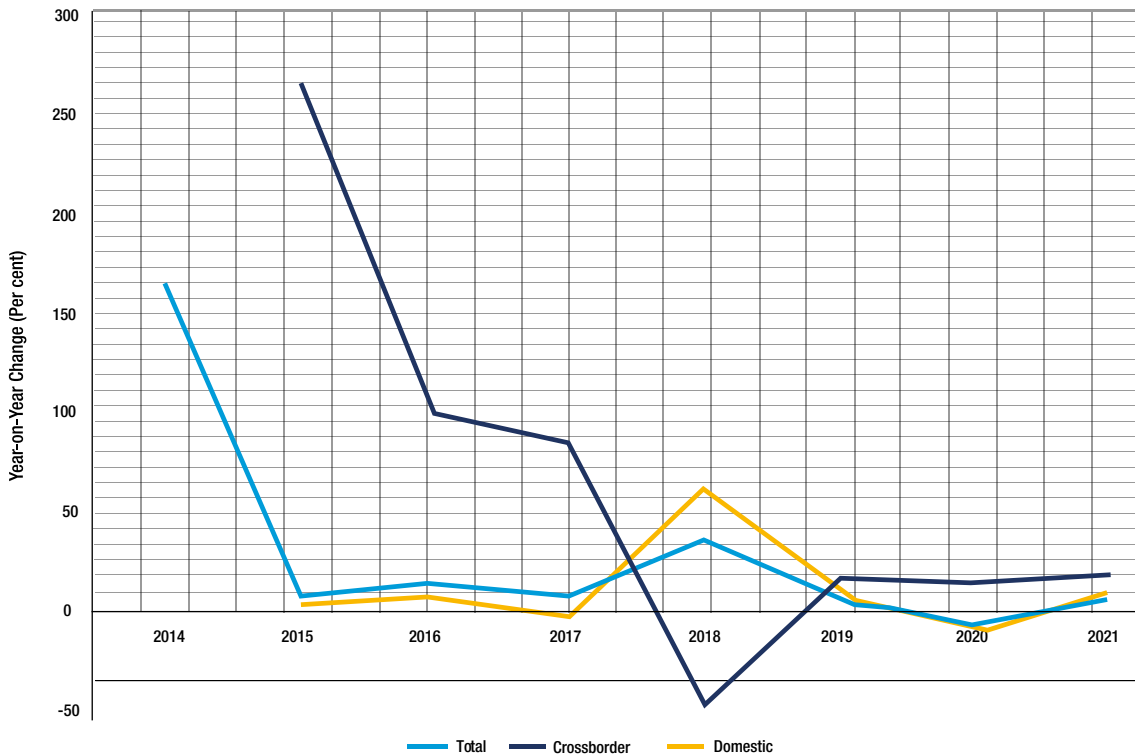
Sources: compiled from ETDA, *Value of e-commerce in Thailand 2015, 2016, 2017, 2018, 2019, and 2021* and author's calculation.

2. Growth of cross-border e-commerce

Using the data from ETDA, the growth of cross-border and domestic e-commerce could be calculated, along with the total e-commerce overall development, and illustrated in Figure 3.

Figure 3

Growth Rates of E-commerce in Thailand



Sources: calculated from ETDA, *Value of e-commerce in Thailand 2015, 2016, 2017, 2018, 2019, 2020 and 2021*.

As described earlier in II.A, the total growth in 2014 was driven by cross-border e-commerce; similarly, the recovery in 2020 and 2021 was also driven by cross-border e-commerce.

Focusing only on the second structural shift, which occurred around 2017, it is possible to observe the growth of cross-border e-commerce in Thailand compared to its domestic and total e-commerce values.

Thailand's domestic e-commerce expanded dramatically at over 60 per cent in 2018, while cross-border transactions contracted by almost 50 per cent. This indicates a certain degree of interchangeability between the domestic and international market portions. Interestingly, the onset of the COVID-19 pandemic significantly impeded domestic growth and total growth between 2019 and 2020, while cross-border transactions maintained steady growth from 2019 to 2021. Table 2 illustrates the calculated growth rates of e-commerce in Thailand.

Table 2
Growth Rates of Thailand's e-commerce

Growth rates of e-commerce (year-on-year per cent)			
	TOTAL	DOMESTIC	CROSS-BORDER
2015	10.41	4.35	264.40
2016	14.03	6.89	99.74
2017	7.91	-4.05	84.73
2018	36.36	61.80	-48.49
2019	7.59	6.77	16.11
2020	-6.68	-8.88	14.57
2021	6.11	4.53	18.25
Average	10.82	10.20	64.18

Sources: calculated from ETDA, *Value of e-commerce in Thailand 2016, 2017, 2018, 2019, and 2021*.

3. Potential of Thailand's cross-border e-commerce

Due to the lack of data and information specific to cross-border e-commerce transactions, it is necessary to interpolate the size and growth by using existing data and information on the total value and the share of international e-commerce, as suggested above. ETDA's Thailand Internet User Profile 2016 indicates that over 70 per cent of internet consumers used only Thai-language websites.³⁴ Therefore, it could be estimated that cross-border e-commerce in Thailand could potentially be around 30 per cent of its total value. 70 per cent of its value would be domestic transactions. This rough estimate is confirmed by the US government's International Trade Administration, which indicates that cross-border e-commerce in Thailand accounted for 30 per cent.³⁵ Language barrier plays a significant role in limiting the expansion of cross-border e-commerce. In the future, artificial intelligence is expected to make language and translation tools become more accessible to online consumers.

³⁴ ETDA, *supra* note 31.

³⁵ The US International Trade Administration, *Thailand – Country Commercial Guide: eCommerce*, 26 July 2022, <https://www.trade.gov/country-commercial-guides/thailand-ecommerce>.

4. Roles of customs on e-commerce

Customs regulations governing the export and import of goods from and into the Kingdom of Thailand play an important role in shaping the pattern of Thailand's cross-border e-commerce. Most e-commerce shipments are carried out through postal service and express couriers. There are no export restrictions in Thailand as long as the items are not prohibited or restricted by law, and customs duties are levied. A customs declaration is required regardless of the method of shipment used. However, the importation of goods valued over THB 40,000 (FOB ³⁶) requires customs formalities and customs clearance procedures involving shipping agents as the importation is presumed to be for commercial purposes. For goods valued under THB 40,000, if the declared value does not exceed THB 1,500 (CIF ³⁷), it would be deemed as a personal item, and the delivery would be made directly to the recipient's address without levying any customs duty; if the declared value is between THB 1,500 (CIF) and THB 40,000 (FOB), the item would be either:

- (a) Inspected and its value will be assessed by customs for customs duties and will be held at the post office nearest to the recipient's address. Customs duties and taxes will be invoiced to the recipient and the item can be collected once the customs duties have been paid, including a postal administration fee of THB 20 (this category of goods is called CAT II); or
- (b) Held at the customs warehouse or postal warehouse for joint assessment by customs officers and the recipient, whereby the recipient would be notified by post to be present at the warehouse. The customs duties and taxes are determined on the spot and paid before the item can be collected (this category of goods is called CAT III). ³⁸

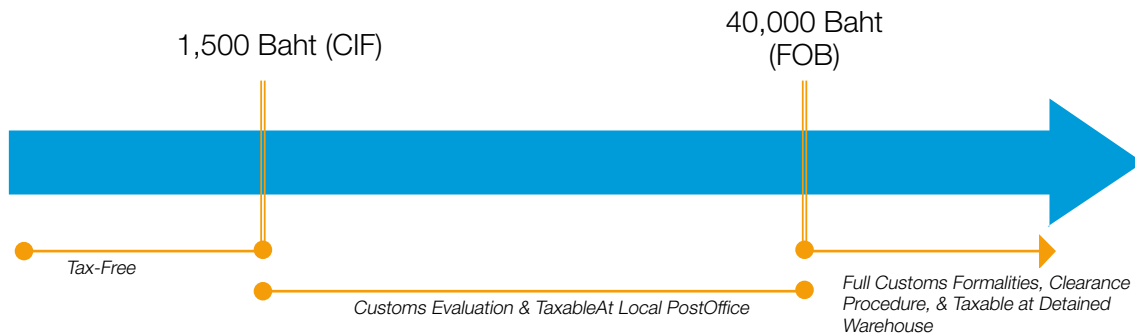
³⁶ FOB – Free on Board – implying the price of a transacted product being loaded onto the vessel for further international shipment; therefore, the FOB price is a price ex-factory of a product plus transportation from the factory to the port and all fees and costs involving loading a product onto the vessel; for more information, please see ICC, Incoterms® 2020, <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/> (accessed 1 November 2022).

³⁷ CIF – Cost, Insurance, and Freight – meaning the price of a transacted product being transported and delivered at the destination port; therefore, the CIF price is a FOB price plus freight charges and insurance to cover a safe voyage of the shipment until it reaches the port of destination. Afterwards, the buyer or importer would assume responsibility for unloading the product, paying for all fees, charges, and taxes during customs clearance, as well as the transportation from the destination port to the buyer's warehouse.

³⁸ Thai Customs Department, Importing Products via Post [in Thai], https://www.customs.go.th/list_strc_simple_neted.php?ini_content=individual_16050_3_03_160922_01&lang=th&left_menu=menu_individual_submenu_01_160421_02, (accessed 1 November 2022).

Figure 4

Criteria for customs assessment upon import



Items shipped by express couriers would be subject to similar regulations. However, the respective couriers would be responsible for the customs formalities and clearance for nominal changes on the recipients' behalf.

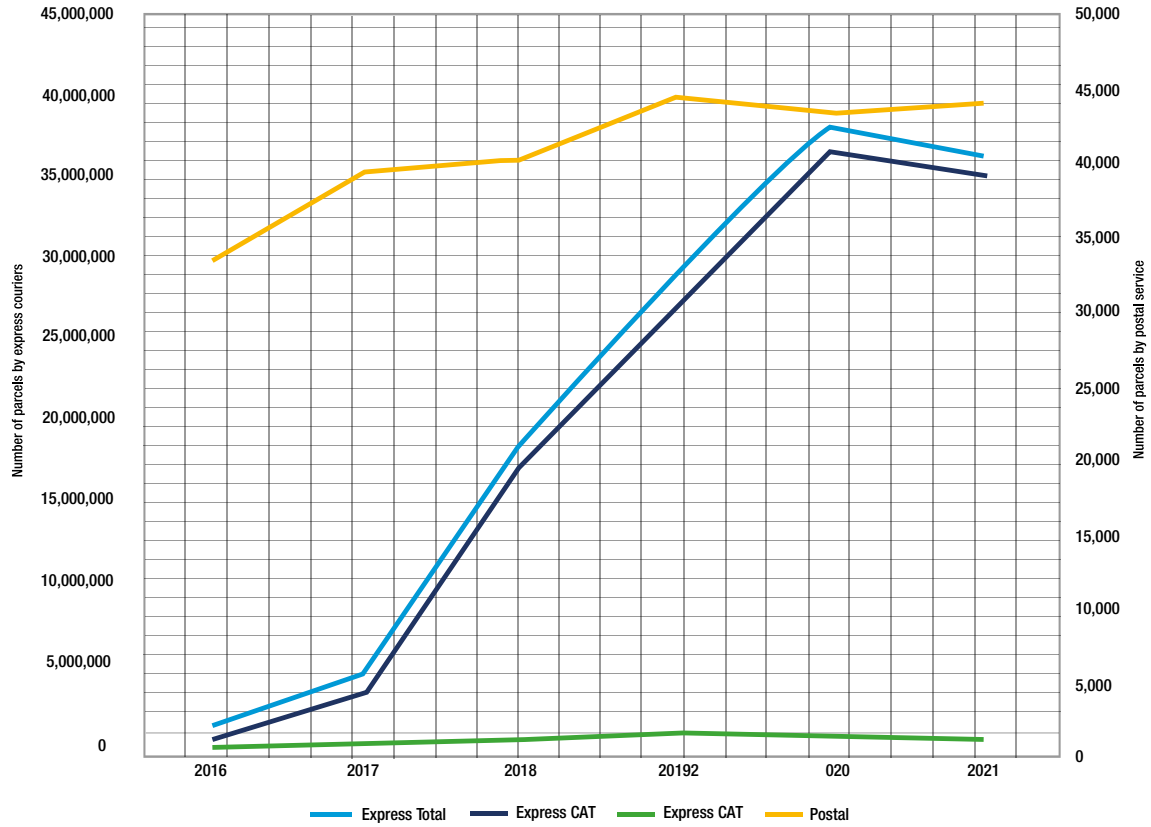
Therefore, consumers in Thailand will receive their products tax-free if the CIF price is equal to or less than THB 1,500. If the product price is between THB 1,500 (CIF) and THB 40,000 (FOB), consumers face a certain degree of uncertainty regarding customs duties, either in the case of postal or express couriers.

Figure 5 illustrates several incoming parcels from the top 10 countries of origin between 2016 and 2021 through express couriers (both CAT II and CAT III (see above)) and postal services (CAT II only (see above)) as provided courtesy of the Customs Department of Thailand.

Figure 6 shows their respective corresponding growth rates. Both figures suggest a considerable increase in imports of products from abroad, particularly those using express couriers for shipping, which rise much faster than those using traditional postal services. However, the trend stabilized in 2020. Cross-border e-commerce transactions would be primarily shipped via these channels; hence, the potential of cross-border e-commerce volume of Thailand may be deduced from these figures. It is worth noting that the proportion of CAT III parcels (items with an estimated value most likely to be closer to THB 40,000 (FOB) and shipped by express couriers) is very small compared to parcels in CAT II (the estimated value between THB 1,500 (CIF) and THB 40,000 (FOB) shipped by express couriers and postal services). Table 3 indicates the declining importance of CAT III parcels, which fell from 41.47 per cent of total parcels from the top 10 countries of origin in 2016 to only 3.97 per cent in 2021.

Figure 5

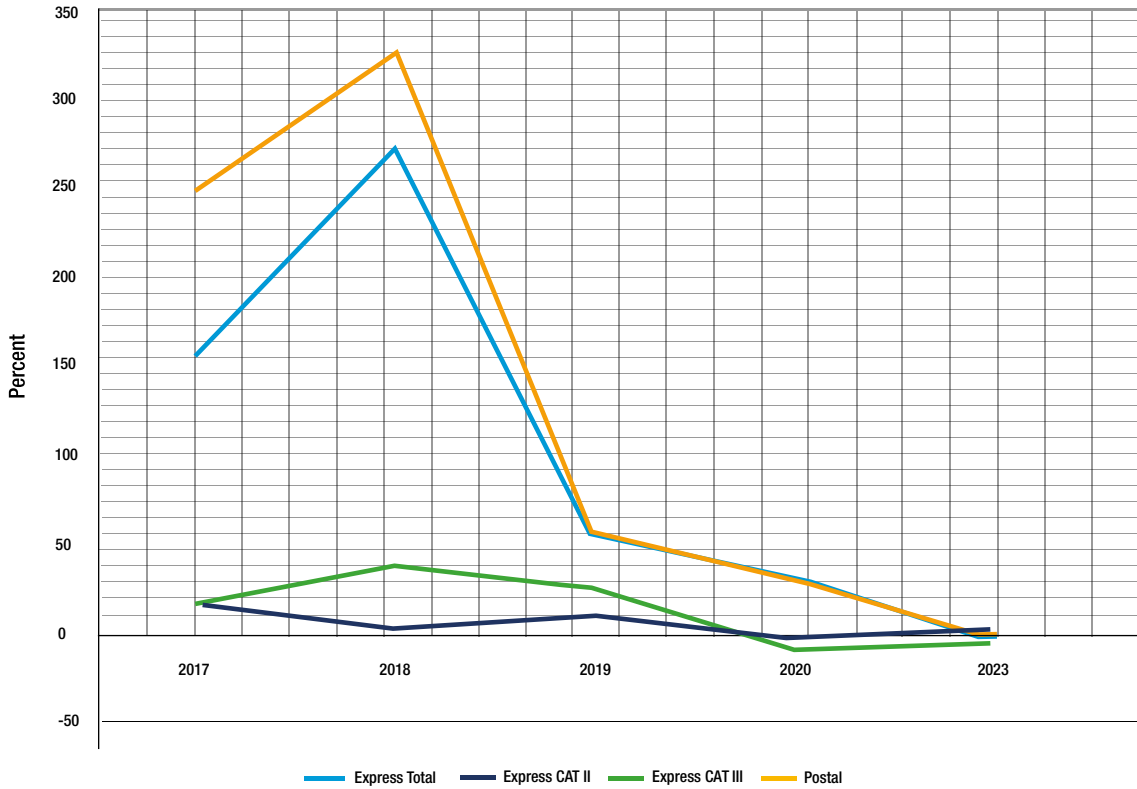
Incoming international parcels from top 10 countries of origin by express couriers and postal services, 2016 - 2021



Source: Data courtesy of the Customs Department of Thailand.

Figure 6

Growth rate of incoming international parcels from top 10 countries of origin by express couriers and postal service, 2017 - 2021



Source: Data courtesy of the Customs Department of Thailand.

Table 3 Proportion of incoming international parcels from top 10 countries of origin

	Proportion of total parcels (per cent)		
	CAT III	By express couriers CAT II	By postal services
2016	41.47	58.53	1.64
2017	19.18	80.82	0.77
2018	7.06	92.94	0.21
2019	5.70	94.30	0.15
2020	4.00	96.00	0.11
2021	3.97	96.03	0.12

Source: Data courtesy of the Customs Department of Thailand.

5. Product types in Thailand's e-commerce

With respect to the product types traded through e-commerce, 2017 seems to be a year of significant structural change. As mentioned above, it marked a big leap in terms of value, and was also the year when the pattern of product types changed significantly. Before 2017, e-commerce in Thailand was led by online accommodation bookings/reservations, which accounted for approximately 30 per cent of the total value.³⁹ In 2017, retail and wholesale transactions became the top type of e-commerce transaction in the country, accounting for 31.48 per cent.⁴⁰ The share of retail and wholesale transactions increased to a staggering 47.70 per cent in 2020 and 52.14 per cent in 2021.⁴¹ Thus, retailing and wholesaling transactions have been the mainstay of Thailand's e-commerce landscape since 2017.

In terms of retailing and wholesaling, online shopping⁴² ranks first, followed by specialty stores selling **(a)** cosmetics, dietary supplements, fragrances, and beauty products, **(b)** fashion, clothing, jewelry, and decorative items, **(c)** computers and electronics, **(d)** furniture and home decorations, **(e)** construction materials, **(f)** food and beverages, **(g)** sports equipment, sporting goods, toys, and souvenirs, and **(h)** automotive parts and accessories.⁴³ The ranking of these products varies from year to year as shown in Table 4 below.

³⁹ ETDA, *Value of E-commerce Survey in Thailand 2015* (Bangkok: Electronic Transaction Development Agency, 2015) [hereinafter E-commerce Survey 2015]; ETDA, *Value of E-commerce Survey in Thailand 2016* (Bangkok: Electronic Transaction Development Agency, 2016) [hereinafter E-commerce Survey 2016].

⁴⁰ ETDA, *Value of E-commerce Survey in Thailand 2017* (Bangkok: Electronic Transaction Development Agency, 2017) [hereinafter E-commerce Survey 2017].

⁴¹ ETDA, *Value of E-commerce Survey in Thailand 2021* (Bangkok: Electronic Transaction Development Agency, 2021), 72 [hereinafter E-commerce Survey 2021].

⁴² The term "Online mall" refers to online retailers offering many types or groups of products under the same websites, including e-Marketplace. Examples of online mall in Thailand include JD Central, which is an online or virtual department store (JD Central owns the products sold to customers), and Shopee and Lazada, which are e-Marketplaces (the latter companies have no products of their own but act as a platform to match sellers of various products with a large group of buyers).

⁴³ ETDA, *E-commerce Survey 2015, 2016, 2017, and 2021*, supra notes 39, 40 and 41.

Table 4
Ranking of product types in Thailand's e-commerce, 2015-2020

Product group	Rank (by value in respective year)					
	2015	2016	2017	2018	2019	2020
Online shopping	1	1	1	1	1	1
Cosmetics, dietary supplements, fragrances, and beauty products	2	3	3	3	2	2
Fashion, clothing, jewelry, and decorative items	5	5	5	3	3	3
Computers and electronics	4	4	4	6	4	4
Furniture and home decorations	7	7	7	5	5	5
Construction materials	n/a	n/a	n/a	n/a	6	6
Foods and beverages	3	2	2	4	7	7
Sports equipment, Sporting goods, toys, and souvenirs	6	6	6	7	n/a	n/a
Automotive parts and accessories	8	8	8	8	n/a	n/a

Sources: compiled from ETDA, *Value of E-commerce in Thailand 2015, 2016, 2017, 2018, 2019, and 2020*.

According to Table 4, most product groups are potentially traded in cross-border transactions, with the exception of construction materials, which tend to be bulky and heavy, and food and beverages, which are often perishable. It is worth noting that the importance of food and beverages has considerably declined in ranking from 2nd or 3rd before 2017 down to 7th in recent years. Transactions involving these products are more prone to disputes.

6. Trade partners in Thailand's cross-border e-commerce

The top destinations for Thai products sold via cross-border e-commerce are China (14 per cent), Japan (10 per cent), the United States of America (9.7 per cent), Indonesia (5.2 per cent) and Malaysia (5.0 per cent).⁴⁴ It is worth noting that exports via cross-border e-commerce are more diversified than overall exports.

⁴⁴ The Paypers, E-commerce Facts and Figures in Thailand, <https://thepappers.com/e-commerce-facts-and-figures/thailand/27> (accessed 1 November 2022).

Cross-border e-commerce imports are principally from Japan (22 per cent), China (18 per cent), Malaysia (6.3 per cent), the United States of America (5.3 per cent), and the Republic of Korea (4.5 per cent).⁴⁵

7. Potential disputes in Thailand's cross-border e-commerce

As there is no systematic data recording on cross-border e-commerce disputes in Thailand, it is necessary to extrapolate from circumstantial evidence. It is estimated that the probability of e-commerce disputes is around 0.325⁴⁶ of the total value of e-commerce transactions and approximately 5.0⁴⁷ per cent of the total number of e-commerce transactions.⁴⁸ As mentioned above, cross-border e-commerce in Thailand can be calculated to be around 30 per cent of its total transactions. Therefore, the probability of cross-border e-commerce disputes in Thailand is estimated to be between 0.098 and 1.5 per cent of total cross-border transactions. Consequently, the value of cross-border e-commerce disputes is estimated to be between THB 503.87 and THB 7,741.85 million.

In 2021, imports of small parcels from the top ten countries of origin amounted to 36,752,173 imported parcels; based on the above references, the number of parcels subject to potential cross-border e-commerce disputes per year is estimated to be approximately 11,760,695 parcels per year.⁴⁹ In addition, the import value of small parcels from the top ten countries of origin by express courier was THB 19,217,121,663.38; based on the 0.325 per cent referred to above, the value of potential cross-border e-commerce disputes is estimated to be around THB 6,245.55 million – which is consistent with the previous calculation.⁵⁰

⁴⁵ Ibid.

⁴⁶ This extrapolation is based on data in Canada where the total value of e-commerce was US\$27.45 billion in 2017 and Canada's online tribunal for small-claim disputes worth less than US\$3,722 (CDN\$5,000) was established. In 2017, there were 14,000 cases in the first 7 months. Therefore, for the entire year of 12 months, there would be 24,000 cases. If each case is worth the maximum claim of US\$ 3,722, the total claims would amount to US\$ 89,328,000. This is 0.325 per cent of the total value of e-commerce. See Statista, Retail E-Commerce Revenue in Canada from 2017 to 2025, <https://www.statista.com/statistics/289741/canada-retail-e-commerce-sales/> (accessed 1 November 2022).

⁴⁷ Counterfeited and pirated products accounted for 5 per cent of all imports into the EU according to Europol. See Europol, Crime Areas & Trends: Keeping Ahead of the Criminals, 16 November 2021, <https://www.europol.europa.eu/crime-areas-and-trends/>.

⁴⁸ This estimate coincided with Theresa Mullineaux, Online Dispute Resolution: Companies Implementing ODR, September 9, 2020, <https://libraryguides.missouri.edu/c.php?g=557240&p=3832247> which states that around 3-5 per cent of e-commerce transactions resulted in a dispute.

⁴⁹ Authors' calculations.

⁵⁰ Data courtesy of the Thai Customs Department. Note that only small parcels using express couriers have declared customs values. Given that not all deliveries of small parcels pertain to cross-border e-commerce and the data pertain to only the top 10 countries, and the number and value of small parcels shipped through the postal service are significantly smaller, the authors treat these numbers as a rough approximation of cross-border e-commerce transactions.

Alternatively, as discussed in above on the role of customs in e-commerce, due to the tax structure of imports and the proportion of imported parcels shown in Figure 5 and 6 as well as Table 3, each e-commerce transaction would be worth no more than THB 40,000 at its origin – while the majority would be valued at around THB 1,500 at most, including shipping and insurance. By further extrapolation using the data in Table 1 and Figure 5, the average estimated value of each parcel between 2018 and 2022 is approximately THB 13,929.83.

OCPB does not report any cross-border e-commerce disputes. However, there are three cases of e-commerce disputes where the buyers are foreign nationals residing in Thailand. The disputes in question concern: item not-as-described, for a value of THB 4,765; defective item, for a value of THB 44,540; and return and refund, for a value of THB 4,590.⁵¹

B. MARKET PLAYERS

1. Omni-channel sellers

The expansion of e-commerce in Thailand from the supply side or the sellers' side comes from two sources: **(a)** the expansion of e-commerce by physical stores, allowing them to become more omni-channel, serving a broader customer base and tailoring goods to different customer needs and **(b)** the expansion of purely online sellers with no physical presence. In 2020, the former group of sellers represented 76.26 per cent of all e-commerce sellers, and the latter group represented 23.74 per cent.⁵² The presence of the latter group is becoming increasingly apparent, rising from 17.99 per cent in 2018, thereby representing an annual growth of 15.95. Indeed, this was due to the health and movement restrictions imposed to contain COVID-19 in 2020 and later lifted in mid-2022. On the one hand, e-commerce was the answer to overcoming these restrictions, facilitating trade and attracting new sellers to enter the market. On the other hand, the absence of physical stores allowed unscrupulous sellers to participate more extensively in the e-commerce market. This may have led a higher number of e-commerce disputes. Comparing the growth of purely online sellers of 15.95 per cent to the average growth of e-commerce in Table 2 above of 10.82 per cent, it would appear that the number of sellers has expanded faster than the market value, thus suggesting greater competition between sellers and, in turn, a higher likelihood of disputes involving dishonest sellers.

⁵¹ Data from OCPB (11 January 2023).

⁵² ETDA, *E-commerce Survey 2021*.

2. B2C sellers

There has also been a shift in the type of transactions in Thailand's e-commerce. Prior to 2019, more than half of Thailand's e-commerce value comprised B2B (business-to-business) transactions. However, since 2019, e-commerce transactions have been increasingly comprised of B2C (business-to-consumer) transactions, rising from 51 per cent in 2019 to 72.16 per cent in 2020 and 65 per cent in 2021, respectively.⁵³ Again, this suggests an increasing potential for both domestic and cross-border disputes. In the past, when physical business addresses were easily identifiable, it was easier for claimants to bring claims against such businesses. However, with such a large number of online sellers with no physical presence on the market, claimants may find it difficult to identify the relevant party to sue.

3. E-commerce for SMEs

From 2020 onwards, the majority of e-commerce values pertain to small- and medium-enterprises (SMEs), which accounted for 52.73 per cent in 2020 and a staggering 61.02 per cent in 2021.⁵⁴ This was a significant structural change in terms of the average size of sellers as compared to the e-commerce market in previous years, which had been dominated by well-established enterprises with sufficient resources to fund the IT infrastructures required to enter the market. The restrictions in response to COVID-19 provided fertile ground for the burgeoning development of SMEs. However, SMEs remain limited in the manufacturing, information and communication, and transportation sectors⁵⁵ due to the high sunk costs and capital investment.

Focusing on retail and wholesale, which is currently the largest sector of e-commerce in Thailand, there are two main groups of sellers:

- (a)** Small independent sellers (this group of sellers are individuals who are not registered as commercial business operators);
- (b)** Commercially registered sellers which fall into the following two sub-groups:
 - (i)** Specialty stores: sellers in this subgroup sell specialized products of certain types, such as cosmetics, furniture and home decorations, or computers and electronics (see II.A.5 above) – 51.41 per cent of them are SMEs, and the rest are large enterprises;
 - (ii)** Online retailers, department stores, or convenience stores: sellers in this subgroup sell various types of products – 49.56 per cent of them are SMEs, and the remaining 50.44 per cent are large enterprises.⁵⁶

⁵³ Ibid at 67.

⁵⁴ Ibid at 100.

⁵⁵ Ibid at 102.

⁵⁶ Ibid at 109.

4. Platforms for Thailand's e-commerce ⁵⁷

E-commerce in Thailand is conducted on various platforms. Table 6 shows the distribution of platforms in Thailand's e-commerce. It can be seen that e-tailers account for around 30 per cent of e-commerce value, social media capture for approximately 17 per cent, Electronic Data Interchange or EDI ⁵⁸ (which is used widely in the B2B and manufacturing sectors) represents around 12 per cent, and e-marketplace represents around 10 per cent of the total market value.

Table 6
Selected Platforms in Thailand's e-commerce 2020

Platforms	Value (million Baht)	Proportion (per cent)
e-Tailer	1,189,205.94	31.442
Social commerce/Social media	655,411.11	17.329
Electronic data interchange (EDI)	465,908.32	12.319
e-Marketplace	398,182.79	10.528
Online travel agency (OTA)	166,853.75	4.412
Ride-hailing	113,485.84	3.001
Foreign platforms	1,290.54	0.034

Sources: ETDA, *Value of e-commerce in Thailand 2021*.

Retailing and wholesaling use the platforms in different proportions than the national averages. Table 7 shows the platforms utilized in retailing and wholesaling.

⁵⁷ Data from ETDA Thailand denotes that social commerce/social media is considered e-commerce for the entity, and therefore is included in this report.

⁵⁸ EDI or Electronic Data Interchange is the intercorporate communication system of business documents that have standardized formats involving no paperwork between them; for example, Company A can place a purchase order to Company B and Company B send an invoice to Company A – all using EDI.

Table 7

Selected platforms in Thailand's e-commerce – retailing and wholesaling – 2020

Platforms	Value (million Baht)	Proportion (per cent)
Social commerce/Social media	531,942.35	14.065
e-Tailer	457,477.31	12.096
e-Marketplace	319,887.99	8.458
Electronic data interchange (EDI)	99,614.20	2.634
Ride-hailing	18,664.50	0.493

Sources: ETDA, *Value of e-commerce in Thailand 2021*.

Most platforms used in Thailand's e-commerce provide some security and mechanisms to deal with potential disputes. However, as social commerce or e-commerce via social media has become popular in Thailand, disputing parties communicate with each other without the involvement of third parties when disputes arise. As many as 61.51 per cent of buyers choose social commerce, especially Facebook to purchase products. In this case, consumers are left to contact sellers by themselves. It is undeniable that social commerce poses a considerable risk of online fraud. Anyone can open and close a Facebook account in the blink of an eye, and there is no verification on the part of Facebook to identify sellers. Hence, if the consumer fails to resolve disputes or, even worse, fails to identify the seller, they will need to contact the competent authorities. All other platforms seem to have customer services to deal with any mishaps.

5. Thailand's e-commerce fulfilments – payments and deliveries

E-commerce would not be possible without payments and deliveries, allowing sellers to receive money and buyers to receive their products. As such, payments and deliveries are the physical backbone of e-commerce. The performance of payment and deliveries directly determines the market participants' e-commerce experience—buyers and sellers. If they are smooth and trouble-free, the likelihood of disputes would be greatly reduced. It is possible to note that e-commerce disputes are likely to arise in two main areas: **(i)** e-commerce goods or services and **(ii)** transactions. If the goods or services purchased meet consumers' expectations, and sellers do not misrepresent them, poor performance could lead to disputes. For example, the payment may not reach the seller even though the buyer has already paid (for example, transferring funds to the wrong account or typos in the exchange of payment information), or the goods may be damaged in transit.

(a) Payment

The pattern of e-commerce payments in Thailand is interesting from a different perspective. Most payments in 2020 were made through mobile- or internet banking offered by commercial banks (32.10 per cent of the total e-commerce value). Cheques were used in 28.33 per cent of transactions (mainly for EDI and/or B2B transactions). Credit/debit cards account for only 21.15 per cent.⁵⁹ Notably, payment services (such as Paypal or platform-dedicated payment systems) – both domestic and international – are negligible, reflecting the limited value of cross-border e-commerce.

Although commercial banks' mobile or internet banking are secured (in the sense that money cannot be misplaced or lost), they do not support e-commerce. Payments via mobile or internet banking are recognized as account-to-account transfers not as commercial transfers. Commercial banks are exempt from any liability in the event of a dispute. This leaves ample room for disputes to emerge. Credit/debit cards seem to be the most suitable payment method for e-commerce, but their share is somewhat limited at around 21 per cent. Credit/debit cards offer protection for sellers and buyers in the event of any dispute.

(b) Delivery

Three main groups of players provide delivery services to fulfil e-commerce in Thailand, as shown in Table 8, where it should be noted that sellers use more than one service to make their deliveries. For the majority of sellers who are SMEs, express couriers are the preferred choice for delivery. In contrast, sellers who are enterprises (or those who have expanded from established conventional stores) choose their dedicated delivery services, which entail considerable investment and operating costs. Postal services are ranked third for both types of sellers, as express couriers already offer a collection service at sellers' premises and a dedicated delivery service based at sellers' premises. To use the postal service, sellers have to physically go to the post office. Interestingly, e-commerce sellers in Thailand appear to be investing in their delivery, implying that the delivery services are not yet up to the standards needed to preserve the value of goods delivered.

⁵⁹ Ibid at 131.

Table 8

Share of delivery services in Thailand's e-commerce 2020

Delivery service	Share of delivery services used by seller types (per cent)	
	SMEs	Other Enterprises
Domestic express couriers	47.88	63.31
Dedicated delivery service (seller-owned/-operated)	41.79	71.01
Postal service (Thailand Post)	25.53	46.75
Ride-hailing	14.52	7.69
Others	8.89	7.10

Sources: ETDA, *Value of E-commerce in Thailand 2021*, at 147.

In the absence of data and information on the delivery of cross-border e-commerce in Thailand, this report presumes a similar pattern of delivery choice. International express couriers, international delivery services, and international postal services are the predominant shipping services for cross-border e-commerce transactions. Moreover, considering the cross-border e-commerce transactions below (see II.C.1), most are conducted through dedicated websites and platforms. Many offer dedicated international delivery services, such as Amazon's AmazonGlobal, which acts as a delivery platform within a retail platform encompassing many international delivery service providers⁶⁰ and eBay's Global Shipping Program (GSP) managed by Pitney Bowes.⁶¹ There are many international express couriers or delivery services in China, including Yanwen, J&T Express, JD Worldwide, and Kerry Express, two of which have domestic operations in Thailand. International postal and parcel services presumably handle the rest of cross-border e-commerce delivery. Data on importing small parcels into Thailand show that almost all small parcels subject to customs duties are handled by international express couriers (99.88 per cent) and the rest by international postal services.⁶²

⁶⁰ Amazon, *AmazonGlobal Export Countries and Regions*, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GCBBSZMUXA6U2P8R> (accessed 1 November 2022).

⁶¹ Pitney Bowers, *Package Tracking FAQs*, <https://www.pitneybowes.com/us/support/shipping/ebay.html> (accessed 1 November 2022).

⁶² Data courtesy of the Thai Customs Department. Note that not all parcels pertain to e-commerce, but the pattern prevails in this regard.

C. Business models

1. General Thailand's cross-border e-commerce

As cross-border e-commerce in Thailand is limited, most cross-border e-commerce transactions are conducted through foreign websites. The most popular websites for Thais are **(a)** Aliexpress (China), **(b)** Taobao (China), **(c)** Alibaba (China), **(d)** Amazon (United States of America), **(e)** eBay (United States of America), **(f)** iHerb (United States of America), **(g)** Etsy (United States of America), **(h)** From Japan (Japan), **(i)** Amazon Japan (Japan), **(j)** Yahoo! Auctions Japan (Japan), **(k)** Rakuten (Japan), **(l)** KTOWN4U (Republic of Korea), and **(m)** G-market (Republic of Korea).⁶³ With the exception of Yahoo! Auctions Japan, an online auction house and eBay, an online auction house and an e-marketplace, most of these websites are online shopping malls. They have their back-office systems that handle ordering, payment, delivery and dispute resolution mechanisms.

The websites listed above correspond to the pattern of cross-border e-commerce described in II.A.6 in terms of countries and product types.

Given the prevalence of social commerce or social media in Thailand, it could be inferred that buyers and sellers who have a good command of foreign languages can use their communication skills to conduct business deal with their foreign counterparts over social media. However, there is no data or information yet available to support this point. One real-life example of performing cross-border e-commerce via TikTok by exporting a lot of Thai consumables and cosmetics, as well as Thai superstitious amulets, to China, which are worth more than THB 5 million a year, requires experts in the Chinese language as well as coordination with web administrators and agents in China to facilitate live broadcasts and to take care of the logistics for delivering goods to Chinese customers.⁶⁴ Thus, it is complex, even though the costs of e-commerce are much lower and the consumer catchment area is much wider than physical stores.

⁶³ KTC, *7 Online Shopping Websites: Just Stay Home and Shop Worldwide* [in Thai] <https://www.ktc.co.th/article/knowledge/popular-international-online-shopping-website> (accessed 1 November 2022); YouTrip, *10 ranks of Shopping Online Website Abroad in 2022 that YouTrip Members have Been Used the Most* [in Thai], <https://www.you.co.th/blog/shopping-online/> (accessed 1 November 2022).

⁶⁴ Young Self Made Millionaire by Selling on Facebook Live, <https://bit.ly/3SHQFwv> (accessed 1 November 2022).

2. Innovative intermediaries

As mentioned above, given the language barrier difficulties limiting cross-border e-commerce transactions, Thais may be unwilling to engage in cross-border e-commerce by themselves, particularly as buyers. However, as demand for foreign products is high, Thais are availing themselves of intermediaries to engage in international trade. This report uses the term used for such intermediary as a “hopping mule” or “*Rub Hiew*” (in Thai – literally translated as “*carry for you*”).⁶⁵ A hopping mule is a person who buys a product from abroad and resells it to end-users or consumers in Thailand for a nominal charge. Hopping mules can be classified into:

- (a) Real Hopping Mules who travel to other countries to buy ordered products (in Thai, this is called “*pre-order*”), bring them back to Thailand and then distribute these goods to those who have placed the orders. Some pre-order real hopping mules take payment upfront before going abroad; some of them collect the price of the products and the mule charges later on;
- (b) e-Hopping Mules who do not physically travel abroad but order products from other countries via e-commerce. They may buy from e-marketplaces abroad, auction websites, foreign e-tailers, and/or foreign social media. Similarly, some ask for payment from buyers before making the order; others may pay out of pocket before taking payment from buyers in Thailand, plus the charge.

The existence of these mules somewhat hinders the expansion of cross-border e-commerce in Thailand by individual buyers, since if individuals could act independently, they would receive their desired products at lower prices and would not need to pay extra for mules’ services. On the other hand, their services reduce much of the risk and uncertainty associated with international transactions since they absorb a significant portion of risk and uncertainty for consumers; the mules who collect payment later upon delivery, are also essentially providing financial services. Most of them use social media to match their services with potential customers. Many of them have emerged as e-sellers selling foreign products online within the territory of the Kingdom of Thailand. Some have their own websites and some continue to use social media as their primary platform for conducting e-commerce transactions. Disputes are minimal unless they are intentionally fraudulent. Many mules have the products ordered in hand before charging their customers the full amount. In addition, many mules force their potential customers to read products’ descriptions in detail before placing their “*pre-orders*” and impose strict waivers to be exempt from any liability if the product turns out not to be as the customers expected.

Moreover, in addition to mules, service providers can also be called “*cross-border e-commerce solution providers*” or “*integrators*.” This group of service providers offers solutions for those who want to buy products from abroad – particularly in relation to payment domestically in foreign countries and/or shipping arrangements to deliver ordered goods in Thailand. Virtually none are registered as businesses, instead, they rely on their offers and reputations on social media. For instance, they may be Chinese credit card

⁶⁵ Similarly, in China, there are “Daigou;” see <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/445-chinese-underground-banking>.

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holders who can make the payments on Chinese e-commerce websites, or they may have Chinese delivery addresses. There is a nominal charge for this service, and those who offer it also resolve any problems or disputes on behalf of Thai buyers or sellers.

These innovative intermediaries are expected to manage transactions exceeding THB 40,000, as mandated by customs regulations. They play a crucial role in addressing potential challenges in meeting cross-border formalities and contribute to minimizing the risk of disputes, especially considering the substantial transaction values involved.

Chapter III.

Legal and institutional framework governing cross-border B2C disputes

A. International context

Thailand has not entered into any treaties with comprehensive provisions on consumer protection in the context of e-commerce or consumer dispute resolution outside of ASEAN cooperation. The Regional Comprehensive Economic Partnership (RCEP) agreement—which officially entered into force on 1 January 2022 for Thailand and another ten state parties⁶⁶—is applicable and has a chapter on e-commerce.⁶⁷ However, this agreement does not provide detailed rules on consumer protection or detailed rules on cross-border disputes.

The RCEP agreement aims to promote e-commerce among state parties in general, to build an environment of trust and confidence in the use of e-commerce, and to enhance cooperation among parties for developing e-commerce.⁶⁸ Accordingly, in order to create an environment conducive to e-commerce, the RCEP agreement recommends that member states, including Thailand, adopt and maintain transparent and effective consumer protection measures for e-commerce and develop consumer confidence; adopt and maintain laws or regulations to protect consumers from fraudulent and misleading practices in e-commerce that cause or are likely to cause harm to consumers; and publish information on how consumers can seek redress and how businesses can comply with legal requirements in e-commerce.⁶⁹

The Association of South East Asian Nations (ASEAN) Committee on Consumer Protection (ACCP) has issued policy documents⁷⁰ including the *“Guidelines on Online Dispute*

⁶⁶ The Regional Comprehensive Economic Partnership (RCEP) agreement is the free trade agreement (FTA) among the members states of ASEAN (ten member states) and another five FTA partners (Australia, China, Japan, New Zealand and Republic of Korea). As of 1 January 2022, the agreement entered into force for eleven member states: Australia, Brunei Darussalam, Cambodia, China, Japan, Lao People’s Democratic Republic, New Zealand, Singapore, Thailand and Viet Nam; RCEP, <https://rcepsec.org/> (accessed 1 November 2022).

⁶⁷ RCEP chap. 12.

⁶⁸ RCEP chap. 12, art. 12.2.

⁶⁹ RCEP chap. 12, art. 12.7.

⁷⁰ For example, ASEAN, ASEAN Regional Information Campaign on Online Shopping (Mar. 16, 2020), <https://aseanconsumer.org/read-publication-asean-regional-information-campaign-on-online-shopping>; ASEAN, The ASEAN Online Business Code of Conduct, 2020, [https://aseanconsumer.org/file/post_image/2020-02-26%20ASEAN%20COC%20\(fin\).pdf](https://aseanconsumer.org/file/post_image/2020-02-26%20ASEAN%20COC%20(fin).pdf).

Resolution (ODR),”⁷¹ which is a follow-up initiative of the Feasibility Study on the ASEAN ODR Network published in 2020.”⁷² The Guidelines aim to assist ASEAN Member States (AMS) in establishing or strengthening the national ODR system which is open for both offline and online B2C transactions.⁷³ The Guidelines provide AMS criteria for deliberations in creating or developing a national ODR system at the inception stage.⁷⁴ It also provides guiding principles on how to overcome AMS’s divergent policies, laws, and regulations and to provide consistent consumer protection in cross-border e-commerce transactions.⁷⁵ The Guidelines set out the IT, legal, and procedural requirements.⁷⁶

The ACCP officially launched “the Online Consumer Complaints Function” in June 2022 as part of the 3rd ASEAN Consumer Protection Conference 2022 to increase consumer trust and confidence in cross-border B2C e-commerce as it has a significant impact on the regional economy.⁷⁷ ASEAN’s Online Consumer Complaints Function is the first step by ASEAN to address cross-border consumer disputes through the ASEAN ODR Network, which ASEAN plans to develop by the end of 2025 following the outcomes of the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP).⁷⁸ The ASEAN ODR Network is expected to interlink each ODR system of ASM rather than create one single ODR platform for ASEAN.⁷⁹ For this reason, AMS should promote their national ODR systems to interlink ASEAN Online Consumer Complaints Function in the future.

The Online Consumer Complaints Function serves as a clearing house to enable individual or collective consumers or any consumer organization/association to lodge complaints

⁷¹ ASEAN, *ASEAN Guidelines on Online Dispute Resolution (ODR)*, 2022, <https://aseanconsumer.org/file/ODR/ASEAN%20ODR%20Guidelines%20-%20FINAL.pdf> [hereinafter Guidelines on ODR].

⁷² ASEAN, *Feasibility Study: ASEAN Online Dispute Resolution (ODR) Network*, 2020, https://aseanconsumer.org/file/post_image/Feasibility%20Study%20ASEAN%20ODR.pdf [hereinafter Feasibility Study].

⁷³ Guidelines on ODR, *supra* note 71, at 2, 4-5.

⁷⁴ *Ibid* at 5.

⁷⁵ *Ibid* at 9. These principles include the accessibility, transparency and due process.

⁷⁶ *Ibid* at 11-14.

⁷⁷ ASEAN, *ASEAN Committee on Consumer Protection launches Online Consumer Complaints Function*, <https://asean.org/asean-committee-on-consumer-protection-launches-online-consumer-complaints-function/> (accessed 26 October 2022) [hereinafter Online Consumer Complaints Function].

⁷⁸ ASEAN, *ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025*, <https://aseanconsumer.org/read-publication-asean-strategic-action-plan-for-consumer-protection-asapcp-2025> (accessed 26 October 2022).

⁷⁹ Feasibility Study, *supra* note 72, at 35.

on products purchased in AMS.⁸⁰ This primary platform will then refer the complaint to the competent authorities in each AMS to facilitate redress.⁸¹ Consumers or consumer organizations/associations can fill in the form, submit it, and track the progress of their complaints until they are resolved from a tracking number issued by the system.⁸² The Online Consumer Complaints Function expects each complaint to be processed within 30 working days, subject to a possible extension.⁸³

The ASEAN Online Consumer Complaints Function makes it easier for consumers to file complaints electronically. However, it will not resolve the dispute. Instead, it will refer the complaint to the competent national authorities. As a result, the ASEAN Online Consumer Complaints Function is only the first, albeit significant, step in developing the entire ODR system.

AMS can apply the “ASEAN *minus X*,” policy⁸⁴ which allows AMSs at different levels of maturity and development—some of which may need more time to establish the ODR system—to join the ASEAN ODR Network.⁸⁵ This direction is in line with different maturity levels in protecting consumers in AMS. All AMS could gradually move towards providing the ODR network by interlinking ODR systems in AMS for regional cross-border B2C e-commerce. Among AMS, Thailand is recognized as being the most advanced in developing the ODR system.⁸⁶ As for other AMS, Indonesia and the Philippines are in the process of developing ODR. At the same time, Viet Nam has begun work on an integrated system for a more sophisticated ODR system in the future.⁸⁷ As a result, AMS should continue to work together to achieve an integrated ASEAN ODR network in the future.

⁸⁰ Online Consumer Complaints Function, *supra* note 77; ASEAN, ASEAN Consumer Protection Launches Upgraded Website (20 June 2022), <https://aseanconsumer.org/read-news-asean-consumer-protection-launches-upgraded-website>.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ ASEAN Charter art. 21(2); This is ASEAN’s formula for more flexible participation and allowing certain ASM to comply with a decision at a later stage of the process to keep member states together in following a given roadmap even when they disagree on a particular action. Surin Pitsuwasn, “ASEAN’s Three Decades of Regionalism: Success or Failure,” *Thammasat Review* 3 (1998): 7.

⁸⁵ Feasibility Study, *supra* note 72, at 39.

⁸⁶ *Ibid.* at 17-18.

⁸⁷ *Ibid.* at 18; Amdrea E. San Juan, ACCP Sets Launch of Online Dispute Resolution Platform on June 28, 21 June 2022, <https://businessmirror.com.ph/2022/06/21/accp-sets-launch-of-online-dispute-resolution-platform-on-june-28/>.

B. National laws and regulations

Apart from private international law that determines the law applicable to the disputes, the landscape of Thailand's national consumer dispute resolution system is schematically illustrated in Figure 7. The consumer dispute resolution scheme can be divided into three types.

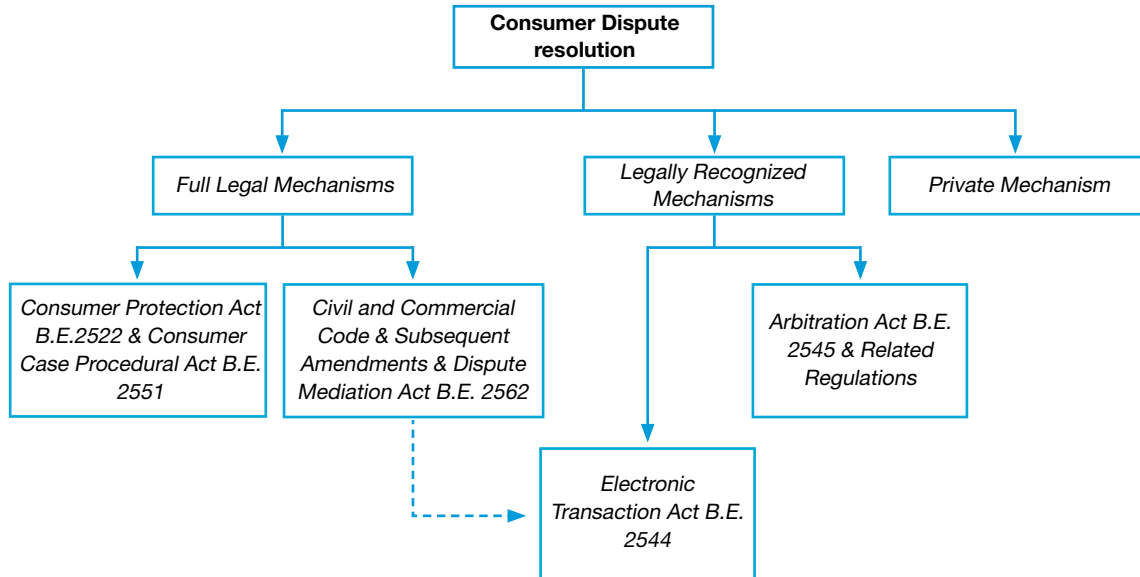
Firstly, there are "*the full legal mechanisms*" where the dispute is handled by relevant public organizations — such as courts or other authorized bodies — subject to certain sets of rules and procedures prescribed by law, resulting in a resolution that is legally enforceable.

Secondly, there are "*the legally recognized mechanisms*" whereby the dispute is handled by organizations recognized by applicable laws to resolve consumer disputes by using alternative processes other than ordinary legal processes, resulting in a resolution that is not legally enforceable but rather depends on the willingness of the disputing parties to comply.

Thirdly, there are "*private mechanisms*" through which businesses and consumers resolve their disputes on a voluntary basis. Some may have a procedure to be followed, and others may require mutual understanding by both parties to settle their disputes. This includes businesses' dispute resolution, customer service, and other contract-based alternatives.

Figure 7

Schematic landscape of Thailand CDR



1. Private international law

Private international law, also known as the conflict of laws,⁸⁸ is indispensable for resolving cross-border/international e-commerce consumer disputes. Suppose a cross-border e-commerce dispute is brought before an adjudicator, be it a court of law⁸⁹ or an alternative dispute resolution institution agreed upon by both parties to a contract. In this case, the first question is whether or not the adjudicator has jurisdiction to resolve the dispute. In other words, whether the adjudicator has the legal authority to decide on the subject matter. Furthermore, if the adjudicator does have jurisdiction, then what law will apply to the dispute? This section focuses mainly on the second question of applicable/governing law. The determination of the appropriate applicable law is crucial for the court, the relevant institutions,⁹⁰ and the parties to the contract since it determines the outcome of any dispute.⁹¹

⁸⁸ Most common law system countries refer to this law as conflict of laws, for example, the United States of America, while civil law system countries refer to it as private international law. See Prasit Piwawatanapanich, *The Commentary of Private International Law [In Thai]*, 5th ed. (Bangkok: Thammasat University Press, 2018), 108. Nevertheless, some scholars find conflict of laws as one part of private international law. See Kanung Luchai, *Kanung Luchai on Thai Conflict of Laws* (Kittiwat Chunchaemsai trans.) (Bangkok: Thammasat University Press, 2018), 15, 17.

⁸⁹ The Civil Procedure Code, art. 4(1). Generally, the court will have territorial jurisdiction over cases where (1) the defendant is domiciled in Thailand or (2) the cause of action arose in Thailand, whether or the defendant is domiciled there.

⁹⁰ For example, arbitrators and those who need to decide on the applicable law.

⁹¹ Luchai, supra note 88 at 16.

a. Choice of law rules

The rise of cross-border e-commerce increases the likelihood of cross-border disputes and requires consideration on jurisdiction and conflict of laws in resolving consumer disputes.⁹² It should be noted from the outset that Thailand does not have any private international law rule that is specifically applicable to consumer contracts or e-commerce consumer disputes. Therefore, the general rule under the Conflict of Laws Act, B.E. 2481 (1938) is the primary law providing for a choice of law analysis. Section 13 of the Act sets out the rules as follows:

“The question as to what law is applicable in regard to the essential elements or effects of a contract is determined by the intention of the parties to the contract. If such intention, express or implied, cannot be ascertained, the law applicable is the law common to the parties when they are of the same nationality, or, if they are not of the same nationality, the law of the place where the contract was made.

When the contract is made between persons at a distance, the place where the contract is deemed to have taken place where notice of acceptance reached the offeror. If such a place cannot be ascertained, local law shall govern the contract’s performance.

A contract shall not be void when made under the form prescribed by the law which governs the effects of such contract.”⁹³

According to section 13 of the Conflict of Laws Act, such Act governs only three legal issues concerning a contract:⁹⁴ **(1)** the essential elements **(2)** the effects, and **(3)** the formality of a contract by considering a particular “*point of contact*” or “*connecting factors*.”⁹⁵ Accordingly, other issues, such as the capacity of a party to enter into a contract, will be subject to another section.⁹⁶ In this context, the most common cases occur in online sales contracts,⁹⁷ i.e., non-performance (such as non-delivery and non-payment) and failure to fulfil contractual obligations (such as a delay in delivery, incorrect quantity, quality, or specification of products) will fall under this section. As mentioned above, the probability of e-commerce disputes arising ranges between 0.325 and 5.0 per cent of total e-commerce transactions in Thailand.⁹⁸ Even without any concrete statistics, disputes are related to these problems.

⁹² Julia Hörnel, *Cross-border Internet Dispute Resolution* (Cambridge: Cambridge University Press, 2009), 60-73, William F. Fox, *International Commercial Agreements and E-Commerce*, 5th ed. (New York: Wolters Kluwer, 2013) 196-202.

⁹³ The Conflict of Laws Act, s. 13 (Unofficial translation).

⁹⁴ Section 13 of the Conflict of Laws Act applies only to general contracts. Thus, if a case concerns a legal act or a specific contract for which the Conflict of Laws Act provides specific rules, for examples, antenuptial agreements, it will fall under these specific rules.

⁹⁵ Saiyut Sanguthai, *Conflict of Laws: General Principle of Private International Law and the Commentary of the Conflict of Laws Act B.E. 2481 by Articles [In Thai]* (Bangkok: Siampanichkarn, 1939), 38-39.

⁹⁶ The Conflict of Laws Act, sec. 10. “The capacity or incapacity of a person is governed by the law of nationality of such person.”

⁹⁷ ETDA, *Online Fraud and Complaint Center: the Overview of cases in 2021*, on file with author.

⁹⁸ The issue of “Potential Disputes in Thailand’s Cross-border ecommerce” under the Section II.A Market Characteristics of this report.

From Section 13, the Thai choice of law analysis regarding **(1)** the essential elements and **(2)** the effects of contracts can be divided into two main scenarios.⁹⁹ The first scenario is where the parties to a contract declare their intention by providing for a law to be applied to a contract. The second scenario occurs when the parties' intention as to the choice of law cannot be ascertained.

i. Party autonomy

If the parties to a contract have expressly or implicitly made a choice as to the law, such law will be the contract's governing law.¹⁰⁰ The Conflict of Laws Act recognizes the intention of the parties to contract and applies the law of the chosen country to a case. However, the Act will allow the use of choice of law according to the parties' intention to the extent that it is not contrary to Thailand's public order or good morals.¹⁰¹

ii. No party autonomy

If the parties' intentions cannot be ascertained, the Conflict of Laws Act provides strict rules on three connecting factors to be considered in turn.¹⁰² Thus, the court or the relevant institutions must follow these rules under the Act, rather than considering the closest and most real connection.¹⁰³

• Nationalities

If contracting parties are of the same nationality, the applicable law is the law common to both of them.¹⁰⁴ For example, if the parties' intention concerning the choice of law cannot be found and both parties are Thai, Thai substantive law will apply under the Conflict of Laws Act, Section 13.¹⁰⁵

⁹⁹ Luchai, *supra* note 88 at 94-99.

¹⁰⁰ The Conflict of Laws Act, s. 13, para. 1. The connecting factor is the intention of the parties. For example, if both parties have agreed that Thai law is the applicable law (express intention) or if all the circumstances of the contract, e.g., the source/background of the contract, the nationalities of the contracting parties, the place in which the contract is concluded, the language, the currency of a contract, and so on, point to an implicit choice of law (implied intention). See Luchai, *supra* note 88 at 94, 97. Piwawatanapanich, *supra* note 88 at 248-51; Kittiwat Chunchaemsai, *Private International Law Book 1: Conflict of Laws* (Bangkok: Thammasat University Press, 2021), 326. Moreover, the application of the choice of law based on the parties' intention must also take into consideration the evidence, to the court's satisfaction, that such choice of law will be applied under section 8 of this Act.

¹⁰¹ The Conflict of Laws Act, s. 5. For example, the Supreme Court decision 1583/2511 held that although the parties to a contract chose the law of Denmark as the applicable law, the clause regarding Denmark's statute of limitation could not apply to this case. This is because the statute of limitation is a law pertaining to Thailand's public order or good morals. Thus, the choice of law of a foreign country in this matter would not be applied.

¹⁰² The Conflict of Laws Act, s. 13, para. 1.

¹⁰³ The Conflict of Laws Act, s. 13, para. 1. Some scholars found this rule outdated. See Piwawatanapanich, *supra* note 88 at 251.

¹⁰⁴ The Conflict of Laws Act, s. 13, para. 1.

¹⁰⁵ The Conflict of Laws Act, s. 13, para. 1.

- **The place where the contract has been entered into**

If the parties are not of the same nationality, the applicable law is the law of the place where the contract has been entered into.¹⁰⁶ In a cross-border dispute, especially in e-commerce, it is difficult to determine the physical place because the process of contract formation occurs online. Generally, the Thai contract law will apply in such a case, and the reason for this is explained in the following section.

- **The place where the obligation under the contract has to be performed**

If the parties are not of the same nationality, and the place where the contract is entered into cannot be determined, the law of the place where the obligation under the contract is to be performed will apply. For example, in the case of a sales of goods contract in e-commerce between a Chinese seller and a Thai buyer, if the Chinese seller has to deliver the products in Thailand as a seller's obligation under the sales contract, Thai law will apply to the delivery part of the contract. Similarly, if the Thai buyer is required to pay the Chinese seller in China, as per the sales contract, the Chinese law will apply to the payment part of the contract.¹⁰⁷

b. Remarks on the choice of law

i. The form of the contract

With regard to the last legal issue described above, the form of a contract, section 13 states that *"a contract shall not be void when made following the form prescribed by the law which governs the effects of such contract."*¹⁰⁸ According to this provision, a contract may be void because its form does not comply with some countries' laws. However, such a contract may be valid if its form complies with the requirements of the governing law. To determine the applicable law, the Conflict of Laws Act refers to the choice of law analysis concerning the effect of a contract.¹⁰⁹ Hence, the four connecting factors, i.e., the parties' intention, the parties' nationality, the place in which the contract is made and the place where the obligation under the contract is to be performed as per section 13 are taken into account to determine the governing law.¹¹⁰

¹⁰⁶ The Conflict of Laws Act, s. 13, para. 2.

¹⁰⁷ Luchai, *supra* note 88 at 99.

¹⁰⁸ The Conflict of Laws Act, s. 13, para. 3. This clause is an exception to section 9 regarding formal validity. For further details, please see Sanguthai, *supra* note 95; Chunchaemsai, *supra* note 100, 343.

¹⁰⁹ The Conflict of Laws Act, s. 13, para. 3.

¹¹⁰ Chunchaemsai, *supra* note 100, 344.

ii. The binding nature of the chosen law

It is also worth noting that a choice of law must refer to hard law—binding legislative acts such as state/national law. If the contracting parties select a soft law— a non-legally binding instrument, such as Good Faith Principle, Lex mercatoria, i.e., International Commercial Terms (Incoterms),¹¹¹ or ASEAN’s Blueprints, Guidelines, or frameworks — they would be considered merely a clause in the contract. At this point, the question arises as to which is the applicable law to govern the contract. The court or other institutions will have to determine the governing law to apply in each case.¹¹² Accordingly, parties to a contract have the freedom to choose hard law or soft law, but the legal results are different. Only hard law can be the governing law of a contract, whereas soft law must be deemed as merely a clause in a contract.

iii. The choice of substantive law in consumer contracts

When referring to a choice of law, it must be assumed that the parties have agreed on the substantive domestic law of the chosen country rather than the conflict of laws of that country.¹¹³ Moreover, the cause of action, namely, the set of facts giving rise to a claim enforceable by a court, is not taken into account when determining the choice of law in a contract.¹¹⁴ The court or relevant institution must apply the legal provision that provided the choice of law analysis.

However, in consumer cases, it is rare that consumers knowingly choose a substantive law. They usually simply accept the terms and conditions proposed by the seller. For this reason, in several countries, including Brazil¹¹⁵ and the European Union,¹¹⁶ the favored point of contact for determining the applicable law is that of the consumer’s residence. This stems from the fact that consumers are generally viewed as the weaker party, and their reasonable expectations are more likely to align with the legal framework they are familiar with.

2. Substantive laws

If private international law, i.e., the Conflict of Laws Act, B.E. 2481(1938), determines the law applicable to this cross-border e-commerce consumer case, the substantive laws in this section will apply to such a case.

¹¹¹ A series of commercial rules established by the International Chamber of Commerce (“ICC”) that are used in international sale contracts. These terms define the tasks, costs, and risks associated with transportation and delivery of goods between parties to a contract. ICC, Incoterms® 2020, <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/> (accessed 1 November 2022).

¹¹² Chunchaemsai, supra no. 100, 328, 347-48,¹¹³ Luchai, supra no. 88at 95.

¹¹⁴ Piwawanapanich, supra no. Errore. Il segnalibro non è definito. at 251; Chunchaemsai, supra no. 100, 340.

¹¹⁵ Brazilian Consumer Code, articles 93 and 101. [CDC_normas_correlatas_6ed.pdf](https://www.senado.gov.br/legislacao/10/CDC_normas_correlatas_6ed.pdf) (senado.leg.br) (access 4 October 2023).

¹¹⁶ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance. <https://eur-lex.europa.eu/eli/dir/2011/83/oj> (access 4 October 2023).

a. Consumer protection law in e-commerce

The Constitution of the Kingdom of Thailand has recognized consumers' rights. They were first enshrined in the 1997 Constitution, followed by the present one, the 2017 Constitution.

¹¹⁷ Several laws and authorities have regulated consumer protection in Thailand.

i. Main consumer protection law

Thailand's first and most important consumer protection law is the Consumer Protection Act B.E. 2522 (1979) (CPA). The Thai CPA was enacted before the first United Nations Guidelines for Consumer Protection in 1985. ¹¹⁸ In addition, the CPA was the first consumer protection law in ASEAN. ¹¹⁹ The CPA has been amended three times, most recently in 2019, ¹²⁰ and thus, the following analysis will refer to the CPA in its latest amended version. Currently, there is no specific law governing consumer protection in e-commerce; therefore, the CPA will protect consumers engaging in both offline and online transactions. ¹²¹

It is important to note that the Thai legal system — laws and regulations, the OCPB, and the court — has different definitions of consumer ¹²², which poses challenges when resolving both national and cross-border disputes. The voluntary peer review on consumer protection law and policy conducted by UNCTAD in 2021 recommended to improve legal certainty by unifying the definition of “consumer” across all laws and to further address the specific domestic needs of vulnerable or disadvantaged groups by extending the definition of “consumer” to categories other than natural persons who purchase goods or services for personal, family or household purposes. ¹²³

¹¹⁷ The Constitution of the Kingdom of Thailand B.E. 2540 (1997), s. 57; The Constitution of the Kingdom of Thailand B.E. 2560 (2017), s. 46 “The rights of a consumer shall be protected”.

¹¹⁸ The United Nations Guidelines for Consumer Protection, GA. Res. 70/186UNGP (Apr. 16, 1985). Later, the Guidelines were revised two more times. See Economic and Social Council Res. E/1999/INF/2/Add.2 (July 26, 1999) GA. Res. 70/186 (Dec. 22, 2015).

¹¹⁹ Luke Nottage et. al., *ASEAN Consumer Law Harmonization and Cooperation: Achievements and Challenges* (Cambridge: Cambridge University Press, 2019), 31.

¹²⁰ The Consumer Protection Act (No. 2) B.E. 2541 (1998); the Consumer Protection Act (No. 3), B.E. 2556 (2013); the Consumer Protection Act (No.4) B.E. 2562 (2019).

¹²¹ Orabund Panuspathna, “The Laws and Policies of Thailand in Supporting E-Commerce,” *Thailand Law Journal* 16, no. 1 (2013): 2; Anya Singsangob, “Thailand’s Consumer Protection in E-Commerce: Laws and Regulations,” *International Journal of the Computer, the Internet and Management* 13, no.3 (2005):19.1, 19.5.

¹²² The Consumer Protection Act B.E. 2522 (1979), amended (1998), s. 3; the Notification of the Contract Committee regarding Automobile and Motorcycle Hire Purchase Business as a Contract-Controlled Business B.E. 2561 (2018), clause 3; The Notification of the Committee on Contracts regarding Building Rental Business for Residential Purposes as a Contract-Controlled Business B.E. 2562 (2019), clause 2; The Decisions of the President of the Court of Appeal, for example, 50/2551, 56/2551, 935/2561, etc., show that the court has applied the concept of the “end-user” which is in contrast with the European approach. See Case C-361/89, Patrice Di Pinto, 1991 E.C.R. I-01189, (Mar. 14, 1991) 16; Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, art 2(1).

¹²³ See Voluntary Peer Review of Consumer Protection Law and Policy: Thailand (UNCTAD/DITC/CPLP/2022/1), <https://unctad.org/webflyer/voluntary-peer-review-consumer-protection-law-and-policy-thailand> [hereinafter UNCTAD Peer Review]; https://unctad.org/system/files/official-document/ditccplp2022d1_en.pdf.

The CPA sets out five fundamental consumer rights: **(1)** the right to be informed; **(2)** the right to freedom of choice; **(3)** the right to safety; **(4)** the right to fairness; and **(5)** the right to be heard and to obtain remedy.¹²⁴ These five fundamental consumer rights can be grouped into two consumer rights.¹²⁵ Moreover, the CPA regulates the obligations and responsibilities of businesses by structuring them into four main parts:¹²⁶ advertising,¹²⁷ product safety,¹²⁸ labeling¹²⁹ and contracts.¹³⁰ These fundamental rights and protection of the four parts under the CPA shall apply to contracts in e-commerce.

ii. Specific consumer rights from other laws

- **Specific types of sales**

In addition to the CPA, Thailand has specific laws to protect consumers in certain areas, such as, for example, the Unfair Contract Terms Act, the Drug Act B.E. 2510 (1967), the Food Act B.E. 2522 (1979), the Cosmetic Act B.E. 2535 (1992), the Product Liability Act B.E. 2552 (2009), etc.¹³¹ These laws will apply to protect consumers in e-commerce transactions provided they do not prohibit or limit the scope of application.

- **E-commerce sales**

Another specific law that will apply to online sales contracts is the Notification of the Central Committee on Price of Goods and Services (No.70) B.E. 2563 (2020) regarding the Display of Price and Description of the Sale of Goods and Services via E-Commerce or Online. It applies specifically and explicitly to businesses selling products through e-commerce. The Ministry of Commerce's Central Committee on Prices of Goods and Services issues the Notification.¹³² It requires all online businesses transacting through e-commerce to display the price and description of goods and services in a clear, complete, transparent, and easy-to-read manner.¹³³ The information relating to a price must always be in Thai, but the Notification allows additional languages according to the businesses' preferences.¹³⁴

¹²⁴ The Consumer Protection Act B.E. 2522 (1979), s. 4.

¹²⁵ Daraporn Thirawat, *Consumer Contracts* [In Thai] (Bangkok: Thammasat University Press, 2016), 31-32.

¹²⁶ For further details, please see Nontawat Nawatrakulpisu, *Consumer Protection Law* [In Thai], 2nd ed. (Bangkok: Thammasat University Publication, 2020); UNCTAD Peer Review, supra no. 29, 6-13; Daraporn Thirawat, supra no. 125, 31-32.

¹²⁷ The Consumer Protection Act B.E. 2522 (1979), s. 22-29.

¹²⁸ The Consumer Protection Act B.E. 2522 (1979), amended (2019), s. 29/1-29/17.

¹²⁹ The Consumer Protection Act B.E. 2522 (1979), s. 20-35.

¹³⁰ The Consumer Protection Act B.E. 2522 (1979), amended (1998), s. 35 bis – 35 novem.

¹³¹ For further information, please see ASEAN, *Handbook on ASEAN Consumer Protection Laws and Regulations*, 2nd. ed. (Jakarta: ASEAN Secretariat, 2021) 60-61; UNCTAD Peer Review, supra no. 29, 12-15.

¹³² The Notification is issued pursuant to the Price of Products and Services Act B.E. 2542 (1999). The Minister of Commerce is chair, and the Permanent Secretary of the Ministry of Commerce is Vice chair of the Central Committee on Prices of Goods and Services.

¹³³ The Notification of the Central Committee on Price of Goods and Services (No.70) B.E. 2563 (2020), clause 4, para. 1.

¹³⁴ The Notification of the Central Committee on Price of Goods and Services (No.70) B.E. 2563 (2020), clause 4, para. 2.

The Notification applies to online businesses, particularly those selling goods or services on social media platforms (e.g., Facebook and Instagram). These businesses choose not to display the prices of their products publicly but instead invite their customers to inquire about these important pieces of information through private chats. The penalty for non-compliance with the Notification is a fine of up to THB 10,000.¹³⁵ More significantly, the law encourages the Thai community to help enforce the Notification. Accordingly, if a business is fined, the government (Department of Internal Trade) will award 25 per cent of such fine to the person who reported the non-disclosure of products' prices and descriptions of businesses.¹³⁶ Although this law has crucial consumer protection objectives and is well-designed to address the serious problems of non-transparency arising out of social commerce, its effective enforcement to tackle businesses non-compliance has been an issue.

- **Direct marketing sales**

Additionally, Thailand has another law to protect e-commerce consumers, including online sales of goods contracts involving cross-border transactions. It is the Direct Sales and Direct Marketing Act B.E. 2545 (2002) (DSDM). The DSDM has been revised twice, and the most recently amended version was the DSDM (No. 3) in 2017.¹³⁷

- **The scope of direct marketing under the DSDM**

The DSDM previously classified all e-commerce sales of goods and services as “*direct marketing*”. This classification applied where a business offered goods or services directly to the consumer at a distance via the internet, akin to the modes of communication such as television, radio, telephone, publication or letter that have been regulated by this Act since 2002.¹³⁸ This direct approach is employed by businesses to elicit a response from the consumer and facilitate the purchase of their goods or services.¹³⁹

However, the most recent amended version of DSDM (No. 3) B.E. 2560 (2017), sets out the following exception:

“Buying or selling goods or services via e-commerce method that is not deemed as direct marketing shall be subject to rules and conditions prescribed in the ministerial regulation.”

¹³⁵ The Notification refers to its primary law, the Price of Products and Services Act B.E. 2542 (1999) for the fine in art. 40.

¹³⁶ The Price of Goods and Services Act, B.E. 2542 (1999), art. 32.

¹³⁷ The Direct Sales and Direct Marketing Act (No. 3) B.E. 2560 (2017).

¹³⁸ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 3.

¹³⁹ Ibid.

o The detailed scope of direct marketing under the Ministerial Regulation

The Ministerial Regulation regarding Buying or Selling Goods or Services via E- Commerce Method That Is Not Deemed as Direct Marketing B.E. 2561, (2018) was issued and specified that:

“Any sales of goods or services conducted via e-commerce as stated below is not deemed as direct marketing.

(1) A sale of goods or services by a natural person who is not registered as a direct marketing operator and earns no more than THB 1.8 million per year from selling goods or services via e-commerce.

(2) A sale of goods or services by a Small- and Medium-sized enterprise, which is legally registered in accordance with Small and Medium Enterprises Promotion.

(3) A sale of goods or services by a community enterprise and its network, which are legally registered in accordance with the Community Enterprise Promotion Law.

(4) A sale of goods or services by a cooperative and a group of farmers who are legally registered in accordance with the Cooperatives Law.”¹⁴⁰

In Thailand, 99.5 per cent of enterprises are Small-Medium-Sized Enterprises (SMEs),¹⁴¹ accounting for 61.02 per cent of Thailand’s e-commerce market in 2021.¹⁴²

As a result, with regards to the definition of Micro-Small-Medium-Sized Enterprise, almost all Thai enterprises that transact online will be exempt from obligations under the DSDM according to the Ministerial Regulation regarding Buying or Selling Goods or Services via E-Commerce Method, as their activities will not be considered as direct marketing. As a consequence of the Ministerial Regulation, almost all Thai businesses that buy or sell goods or services via commercial e-commerce will fall outside the scope of the DSDM rather than a few specific businesses.

¹⁴⁰ The Ministerial Regulation on Product and Service Purchases on E-Commerce Platforms, Considered not to be Direct Marketing B.E. 2561 (2018) (Unofficial translation).

¹⁴¹ The Office of SMEs Promotion, SME promotion plan 2021-2022, https://www.sme.go.th/upload/mod_download/download-20210820091040.pdf, at 3.

¹⁴² ETDA, *E-commerce Survey 2021*, supra note 41 at 100.

o Drawbacks of e-commerce not being considered direct marketing

This new scope of application has advantages. First, it reduces the redundancy of registration of businesses operating online. Prior to the DSDM (No. 3) in 2017, the DSDM required direct marketing businesses to be registered under this Act with the OCPB.¹⁴³ In addition, the Notification of the Ministry of Commerce regarding Requiring Business Operators to Register (No.11), B.E. 2553 (2010) requires all businesses that sell goods or services online to be registered with the Department of Business Development, Ministry of Commerce.¹⁴⁴ Since most businesses selling products online through e-commerce are exempt from this obligation under the DSDM, these businesses only need to register once with the Department of Business Development, Ministry of Commerce. One-stop registration can simplify and streamline the legal procedures for businesses selling products online. Second, unlike the direct marketing business operators, these businesses are not required to post a guarantee with the Registrar: such guarantee ranges from THB 5,000 up to THB 200,000.¹⁴⁵ Being exempt from this requirement will support and encourage businesses, especially micro-sized enterprises that buy and sell online, which make up most Thai businesses, to grow and survive.

However, the most detrimental effect of the new scope of the DSDM is that it pushes most businesses selling online outside the scope of its application. This has the effect of removing the duties and obligations imposed by the DSDM, which aims to protect consumers buying products online. These businesses are therefore not required to provide consumers with documents regarding the sale and purchase of goods or services in Thai and in a form that can be easily read and understood.¹⁴⁶ Such documents would include essential details of the sale contract, including the price under which the consumer is protected and the type of goods or services.¹⁴⁷ The DSDM even provides examples of this information:

“(1) details in accordance with section 30;

(2) due date, place, and method of payment;

(3) place and method of delivery of goods or services;

(4) procedures regarding contract termination;

(5) return method;

¹⁴³ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), amended 2017, s. 20.

¹⁴⁴ The Notification of Ministry of Commerce regarding Requiring Business Operators to Register (No.11) B.E. 2553 (2010), clause 5(3). This Notification was issued pursuant to the Commercial Registration Act of 2499 that requires certain types of businesses to be registered with the Ministry of Commerce.

¹⁴⁵ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), amended 2017, s. 38/5; The Ministerial Regulation regarding Placing a Guarantee for Direct Sale or Direct Marketing Business Operator B.E. 2561 (2018), clauses 3 and 4.

¹⁴⁶ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 30.

¹⁴⁷ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 31.

(6) *warranty;*

(7) *exchange policy in case of damages or defects.*" ¹⁴⁸

Furthermore, when purchasing goods or services through direct marketing, the DSDM requires direct marketing businesses to provide consumers with a right of withdrawal during the cooling-off period. ¹⁴⁹ The consumer can choose to terminate the contract within seven days of receiving the goods or services, irrespective of the existence of reasons justifying the withdrawal. ¹⁵⁰ The right of withdrawal is an important tool for consumers in online contracts. ¹⁵¹ However, consumers have lost this right when purchasing goods or services online. In addition to the right of withdrawal, if the consumer decides to terminate the contract, the DSDM imposes an obligation on direct marketing businesses to refund the total amount of the money paid by the consumer for the purchase of such goods or services. The business must return the money within fifteen days of receiving the consumer's letter of intent to terminate the contract. ¹⁵²

Therefore, consumers lose material rights granted under the DSDM in exchange for encouraging businesses to increase their online transactions. The new scope of direct marketing, which exempts most businesses from selling online products, weakens the consumer protection regime intended by the DSDM for B2C contracts entered into at a distance. This result is contrary to what the DSDM intended, as it does not effectively protect all consumers.

Although most online platforms in Thailand, such as Lazada or Shopee, have return policies, they still ask for reasons ¹⁵³ that are incompatible with the right of withdrawal originally provided for by law. This right of withdrawal is particularly well-suited to sales of online products, given that consumers cannot inspect, check, or test the products as they can in physical stores. Consumers should therefore be able to request a return and obtain a refund without having to give any reason, such as simply changing their mind. Most importantly, most online sellers transact using social commerce, i.e., social media, as stated above. Without a law, these sellers can ignore consumers' right of withdrawal, irrespective of whether the online contracts in question are domestic or cross-border.

¹⁴⁸ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 31, para. 2.

¹⁴⁹ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 33.

¹⁵⁰ The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 33.

¹⁵¹ Christiana Markou, "Directive 2011/83/EU on Consumer Rights," in *EU Regulation of E-commerce: A Commentary* (Arno R. Lodder & Andrew Murray eds., Massachusetts: Edward Elgar Publishing 2017) 205.

¹⁵² The Direct Sales and Direct Marketing Act B.E. 2545 (2002), s. 36.

¹⁵³ Lazada, *Returning Policy*, <https://www.lazada.co.th/helpcenter/how-do-i-return-my-items-11264.html> (accessed 26 October 2022); Shopee, *Returning Policy*, clause 3, <https://shopee.co.th/docs/3610> (accessed 26 October 2022).

b. Contract law

The Thai Civil and Commercial Code (CCC) is the primary law governing contractual acts and contracts. It has gone through many rounds of amendments, and the most recent ones are the Civil and Commercial Code Amendment Act (No. 22) B.E. 2558 (2015) and the Emergency Decree on Amending the Civil and Commercial Code B.E. 2564 (2021).¹⁵⁴ The CCC deals with the contract's formation, effects, validity, and recession.¹⁵⁵

In addition to a specific consumer protection law, the CCC may be relevant to cross-border e-commerce contracts as a general principle of contract law. For example, in order to determine the place of the contract formation under the Conflict of Laws Act, a general rule under the CCC states that it is the place where an acceptance is received by the offeror.¹⁵⁶

The CCC also applies its provisions, by way of extension, to online contracts as the general rule of contractual acts and contracts. They continue to govern the formation, effects, validity, and termination of online contracts and all principles relating to sales contracts. The basic rights of buyers and sellers (not necessarily consumers), such as delivery, payment, or liability for defects, are also governed by the CCC. All cases relating to non-performance (such as non-delivery and non-payment) and non-fulfillment of contracts (such as late delivery, an incorrect quantity, quality, or specification of goods) must be based on a valid contract under the CCC in order for legal action to be taken. Sellers and purchasers of any goods or services may take legal action in the form of a civil lawsuit before a court of law under the CCC.

c. E-commerce transactions law

The principal law regulating e-commerce transactions in Thailand is the Electronic Transactions Act (ETA). The ETA has also been amended three times, most recently in 2019.¹⁵⁷ Although it is not the law that directly governs transactions or consumer dispute resolution, it is the law that recognizes online transactions as legally binding, valid, and subject to the rights and duties prescribed under the CCC. It does not preclude or overrule any authority of the CCC (unless explicitly specific legislation dictates otherwise)¹⁵⁸ or the CPA.¹⁵⁹

The ETA and its first amendment are based on the UNCITRAL Model Laws on E-Commerce (1996)¹⁶⁰ and Electronic Signatures (2001).¹⁶¹ In keeping with the UNCITRAL Model Laws, the ETA contains rules for modern e-commerce by highlighting three fundamental principles:

¹⁵⁴ See the full text of laws in the Office of the Council of State, <https://www.krisdika.go.th/law?lawId=4> (accessed 1 November 2022).

¹⁵⁵ The Civil and Commercial Code, Book II, Title II, s. 149-193 and 354-394.

¹⁵⁶ Ibid.

¹⁵⁷ The brief details of the development of the ETA please see ETDA, *Electronic Transaction Act the Serie* [In Thai], 25 August 2020, https://www.eta.or.th/th/Useful-Resource/Knowledge-Sharing/Electronic-Transactions-Act-the-Series_Ep1.aspx (accessed 31 July 2022).

¹⁵⁸ The Electronic Transaction Act B.E. 2544 (2001), s. 3, para. 1.

¹⁵⁹ The Electronic Transaction Act B.E. 2544 (2001), s. 3, para. 2.

¹⁶⁰ UNCITRAL, UNCITRAL Model Law on E-Commerce (1996) with Additional Article 5 bis as Adopted in 1998, https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce (accessed 31 July 2022).

¹⁶¹ UNCITRAL, UNCITRAL Model Law on Electronic Signatures, https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_signatures (accessed 31 July 2022).

functional equivalence, technological neutrality, and party autonomy.¹⁶²

The second amendment to the ETA is based on the United Nations Convention on the Use of Electronic Communications in International Contracts (2005)¹⁶³ although Thailand is not yet a party to the Convention.¹⁶⁴ This amendment adds several new rules to keep pace with current e-commerce practices, such as, invitations to make offers,¹⁶⁵ use of automated message systems,¹⁶⁶ and electronic communication errors.¹⁶⁷ These rules will also supplement principles in the CCC relating to the formation of contracts. In addition to the new rules on electronic transactions, the ETA revises rules on electronic signatures¹⁶⁸ and electronic service businesses.¹⁶⁹

The latest amendment of the ETA mainly covers legal issues related to identity management and trust services.¹⁷⁰ This is to promote digital identification and verification as the Thai government is preparing to launch the National Digital ID.¹⁷¹

¹⁶² ETDA, *supra* no. 157; UNCITRAL, *UNCITRAL Model Law on E-Commerce with Guide to Enactment 1996 with Additional Article 5 Bis as Adopted in 1998*, (United Nations Publication, 1999), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf.

¹⁶³ United Nations, *United Nations Convention on the Use of Electronic Communications in International Contracts*, (United Nations Publication 2007), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf; UNCTAD, *Review of E-commerce Legislation Harmonization in the Association of Southeast Asian Nations* (2003), 41, https://unctad.org/system/files/official-document/dtlstict2013d1_en.pdf.

¹⁶⁴ The United Nations, Status: United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005), https://uncitral.un.org/en/texts/e-commerce/conventions/electronic_communications/status (accessed 30 July 2022).

¹⁶⁵ The Electronic Transaction Act B.E. 2544 (2001) amended B.E. (January 2019), s. 13/1 compared to the UN Convention on the Use of Electronic Communications in International Contracts, art. 11.

¹⁶⁶ The Electronic Transaction Act B.E. 2544 (2001), amended (January 2019), s. 13/2 compared to the UN Convention on the Use of Electronic Communications in International Contracts, art. 12.

¹⁶⁷ The Electronic Transaction Act B.E. 2544 (2001), amended (January 2019), s. 17/1 compared to the UN Convention on the Use of Electronic Communications in International Contracts, art. 14.

¹⁶⁸ The Electronic Transaction Act B.E. 2544 (2001), amended (January 2019), s. 9.

¹⁶⁹ The Electronic Transaction Act B.E. 2544 (2001), amended (January 2019), s. 32-33.

¹⁷⁰ The Electronic Transaction Act B.E. 2544 (2001), amended (February 2019), chap. 3/1. For further details, see Dhiraphol Suwanprateep, *Thailand – Amendments to Electronic Transaction Act Have Finally Been Enacted – Adding Digital ID Concept and Revising the Criteria For E-signatures, E-transactions, And E-service Businesses*. Baker McKenzie, 3 April 2019, <https://conventuslaw.com/report/thailand-amendments-to-electronic-transaction-act/>.

¹⁷¹ ETDA, *Digital ID in the context of Thailand* [In Thai], 29 July 2018, <https://www.eta.or.th/Useful-Resource/knowledge-sharing/articles/index-article-other-p1/Digital-ID-%E0%B9%83%E0%B8%99%E0%B8%9A%E0%B8%A3%E0%B8%9A%E0%B8%97%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B9%80%E0%B8%97%E0%B8%A8%E0%B9%84%E0%B8%97%E0%B8%A2.aspx> (accessed 30 July 2022).

- **Formation of contract**

For online purchases, it is unclear when and where the online contract is formed. This ambiguity surrounding contract formation is a problem for consumers who need to give evidence to bring cases to the competent authority to enforce their rights and obtain fulfillment of obligations from counterparties who are in breach of contracts. The time of a contract conclusion is essential because it is the point at which the duties and obligations of both parties start, whereas the place of the conclusion of a contract is crucial for determining the jurisdiction of a dispute. Normally, the CCC can answer questions about the time and the place of the conclusion of the contract; however, due to technological advancement, the CCC has not yet been effectively applied to online transactions concluded on websites or online platforms. A clear example is seen in the ETA provision, which states that:

*“a proposal to conclude a contract made through one or more electronic communications, which is not addressed to any specific person but to people in general making use of information systems that can access it, including proposals making use of interactive application for the placement of orders through such information systems, is to be considered as an invitation to make an offer, unless the proposal to conclude a contract clearly indicates the intention of the party to be bound in the case of acceptance.”*¹⁷²

Under Thai law, an offer must be sufficiently clear and definite to enable a contract to be formed if the counter-party accepts the offer.¹⁷³ Accordingly, an advertisement made to the public that does not specify an amount or a price is not an offer.¹⁷⁴ Nevertheless, online advertisements flood the internet world and are open to the public without clear and definite statements that can be considered as an offer. With regard to the time of the formation of the contract, the ETA answers this question. It states that *“the receipt of a data message is deemed to occur from the time when such message enters an addressee’s information system.”*¹⁷⁵ Consequently, the time in which a contract is concluded is when a seller’s acceptance to sell such a product enters a buyer’s information system—the system in which a seller and a buyer contact each other.¹⁷⁶ For example, if a buyer is a consumer who offers to buy a product via a seller’s website, in this case, the contract is formed when the seller’s acceptance enters the consumer’s profile on that website.

In some cases, the acceptance may take the form of an order confirmation via a consumer’s

¹⁷² The Electronic Transaction Act B.E. 2544 (2001) amended B.E. (January 2019), s. 13/1. (Unofficial translation).

¹⁷³ The Civil and Commercial Code does not contain explicit rules on offers. However, the leading scholars in Thai contract law agree on this explanation. See Jeed Setabutr, Principle of Civil Law regarding Juristic Acts and Contracts [In Thai], 7th ed. (Daraporn Thirawat edited)(Bangkok: Thammasat University Press, 2013) 200-205; Jitti Tingsapat, The Explanation of Civil and Commercial Code Sort Section regarding Contract, Book 2 Sections 354-394 [In Thai] (Sanunkorn Sotthibandhu edited)(Bangkok: Professor Jitti Tingsapat Foundation and Faculty of Law Thammasat University Press, 2009) 12-21; M.R. Seni Pramroj, The Civil and Commercial Code concerning Juristic Acts and Obligations, Book 1 (Part 1-2) [In Thai], 4th ed. (Munin Pongsapan edited) (Bangkok: Winyuchon Publication House, 2018) 312-315; Sak Sanongchart, The Explanation of Civil Commercial Code: Juristic Acts and Contracts, [In Thai], 11 ed. (Bangkok: Niti Bannakan Publication, 2014) 347-349; Sanunkorn Sotthibandhu, The Explanation of Juristic Acts and Contracts [In Thai], 24 ed. (Bangkok: Winyuchon Publication House, 2021) 248-249.

¹⁷⁴ Ibid.

¹⁷⁵ The Electronic Transaction Act B.E. 2544 (2001), s. 23.

¹⁷⁶ Id. For further explanations and examples of the time and place of the contract formation, please see Thirawat and Thirawat, see no. Errore. Il segnalibro non è definito., 40-62; Nanakorn, see no. Errore. Il segnalibro non è definito., 378-387.

email, submitted by a consumer while proceeding with the order.¹⁷⁷ In this case, the ETA confirms the result by stating that if a consumer *“has designated an information system to receive data messages specifically, it shall be deemed that the receipt of a data message occurs when the data message enters the designated information system.”*¹⁷⁸ Once the seller’s acceptance enters a consumer’s designated email, the contract is formed.¹⁷⁹ But if a seller sends an order confirmation as an acceptance to a different email, a contract is formed when a consumer can *“retrieve”*¹⁸⁰ that acceptance. Another relevant provision of the ETA that supplements the CCC is the place of contract formation.

The place of a contract formation is a crucial criterion for determining the applicable law. The ETA establishes the rule of the place where a data message is dispatched and received.¹⁸¹ For example, a contract between parties at a distance is formed at the place where an acceptance reaches the offeror.¹⁸² Again, how do we locate the place in the electronic world when there is no physical address? The ETA makes it clear that in the case of a business, it is its place of business.¹⁸³ Suppose a business has more than one place of business. In that case, it is a place of business that has *“the closest relationship to the underlying transaction.”*¹⁸⁴ Conversely, in the case of a consumer, the habitual residence of a consumer *“is the place where a data message is received or dispatched.”*¹⁸⁵ Typically, the offeror is a consumer, so this online contract is formed at the place where an acceptance reaches the consumer.¹⁸⁶ Therefore, according to the ETA, the place of contract formation in which a consumer is an offeror is the consumer’s habitual residence.¹⁸⁷ The applicable law is therefore the law of the country of the consumer.¹⁸⁸

As we have seen some key rules and concepts of the ETA, it should be emphasized that the ETA does not establish rules or discuss consumer protection in e-commerce. It merely deals with the use of electronic means and communications to enable and facilitate e-commerce. Although the ETA has the authority to govern businesses involving online service providers¹⁸⁹ and a new draft of the Royal Decree on Regulating Digital Platforms Services has recently been proposed, this specific law arising under the ETA has not yet been enacted.¹⁹⁰ Thus,

¹⁷⁷ Examples include Amazon, Coach, or Nike.

¹⁷⁸ The Electronic Transaction Act B.E. 2544 (2001), s. 23 para. 2.

¹⁷⁹ The Civil and Commercial Code, s. 169 and 361 with the supplement of The Electronic Transaction Act B.E. 2544 (2001), s. 23 para. 2.

¹⁸⁰ The Electronic Transaction Act B.E. 2544 (2001), s. 23 para. 2.

¹⁸¹ The Electronic Transaction Act B.E. 2544 (2001), s. 24.

¹⁸² The Civil and Commercial Code, s. 169 and 361.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ The Civil and Commercial Code, s. 169 and 361.

¹⁸⁷ The Civil and Commercial Code, s.169 and 361 with the supplement of the Electronic Transaction Act B.E. 2544 (2001), s. 24.

¹⁸⁸ The recommendations for the future Thai conflict of laws regarding the applicable law for consumers will be found the recommendation section below.

¹⁸⁹ The Electronic Transaction Act B.E. 2544 (2001), ss. 32-34.

¹⁹⁰ A draft of Royal Decree on Regulating the Digital Platforms Services B.E. <https://www.eta.or.th/getattachment/7f142a03-3ca1-4a35-aa62-3889fbae51e2/Digital-Service-Platform-Decree-for-Hearing.aspx>; Nont Horayangura, *The Electronic Transactions Development Agency (“ETDA”) of Thailand is Proposing a New Draft Royal Decree on Regulating the Digital Platforms*, Baker McKenzie, 20 July 2021, <https://www.lexology.com/library/detail.aspx?g=06d34b27-6a47-4e21-94bb-987df18aaecd>; The draft Decree aims to regulate and control most digital platforms in Thailand, which include a number of provisions geared towards consumer protection.

when disputes arise from consumer contracts in cross-border e-commerce transactions, the parties to a contract refer to the CPA.¹⁹¹

d. Other laws relating to e-commerce

i. Registration of businesses selling products on e-commerce

Business registration is very important to enable the government, authorities, and especially consumers to trace these businesses in the event that disputes arise from transactions and to locate the counterparties to the contracts.

As discussed above, most businesses selling goods and providing services via e-commerce no longer fall under the scope of the DSDM. They are not required to register their business with the OCPB. Nevertheless, the Notification of the Ministry of Commerce Re: Requiring Business Operators to Register Business (No. 11) B.E. 2553 (2010) requires businesses that sell goods or services by electronic means via internet to be registered¹⁹² with the Ministry of Commerce.¹⁹³ The law provides that all types of businesses, including “*a natural person, an ordinary partnership, a registered partnership, a limited partnership or a limited company under the Civil and Commercial Code or a public limited company under the law on public limited companies, in all areas*” have to be registered in order to operate through e-commerce legally.¹⁹⁴ This law also extends to businesses “*operating as an electronic marketplace portal for the sale of goods and services via the internet,*” such as Lazada or Shopee.¹⁹⁵ The failure to register a business leads to a penalty coupled with an additional fine at a daily rate until the business operator registers its business in accordance with the Business Registration Act B.E. 2499 (1956).¹⁹⁶

Additionally, e-commerce business operators can apply for two trust marks provided by the Department of Business Development at the Ministry of Commerce (DBD).¹⁹⁷ The first one is known as “*the DBD Registered*” trust mark, which confirms that such a business operator has an existing identity and is registered with the department. The second one is “*the DBD Verified*” trust mark, which ensures such a business operator is credible and has passed the quality standard assessment from the DBD.¹⁹⁸ These trust marks will boost businesses’ credibility and help gain consumer trust in e-commerce.

¹⁹¹ If disputes relate to B2B or C2C in terms of the form, the validity of a contract, or obligations of parties under sales contracts, then the general rules under the CCC will apply.

¹⁹² The Notification of the Ministry of Commerce on the Registration of the E-commerce B.E. 2553 (2010), clause 5(3), https://www.dbd.go.th/dbdweb_en/download/pdf_law/BUSINESS_REGISTRATION_ACTBE2499/NOTIFICATIONS/note_minis_comm_re_opera_no11_be2553.pdf.

¹⁹³ The Notification of the Ministry of Commerce on the Registration of the E-commerce B.E. 2553 (2010), clause 6. The business can file an application with the Business Registration Office of Bangkok Metropolitan Administration, Pattaya City Administration, the Municipality or Tambon Administrative Organization in the area where the principal business office is located or with Changwad Administrative Organization only outside the area of the respective Municipality and Tambon Administrative Organization.

¹⁹⁴ The Notification of the Ministry of Commerce on the Registration of the E-commerce B.E. 2553 (2010), clause 5.

¹⁹⁵ The Notification of the Ministry of Commerce on the Registration of the E-commerce B.E. 2553 (2010), clause 5(6).

¹⁹⁶ The Business Registration Act B.E. 2499 (1956), s. 19(1).

¹⁹⁷ DBD, *The Manual of Business Registration for E-commerce* [in Thai], https://www.dbd.go.th/download/ecommerce_file/pdf/e-commerce_manual_570428.pdf.

¹⁹⁸ *Ibid*, at 20.

ii. Payment

Consumers either pay via a direct transfer to the seller's bank account or pay cash on delivery rather than using credit cards or digital wallets.¹⁹⁹ The high number of consumers using cash on delivery and the low number using credit/debit cards in Thailand indicate a lack of confidence and uncertainty in online payments. Poor consumer trust in online payments has become a significant barrier to e-commerce, especially cross-border e-commerce.

A game changer in Thailand's electronic payment system was the launch of "PromptPay" in 2016.²⁰⁰ PromptPay is a real-time electronic payment system.²⁰¹ It aims to facilitate transferring and receiving funds using a citizen ID or a mobile number instead of a bank account number.²⁰² Thai citizens can register their ID or mobile numbers with one bank and use them to receive or transfer their funds.²⁰³ The government started launching PromptPay system by paying welfare benefits and tax returns via PromptPay.²⁰⁴ PromptPay is more advanced than other payment systems in other countries because it deals with citizens and the government.²⁰⁵ Now PromptPay is popular among Thais with a high usage rate— an average of 4.5 million times per day (2018)²⁰⁶ and a peak usage of 16.3 million times per day (2020).²⁰⁷

In addition, in 2017, Thailand launched "the Thai QR Payment," which is in line with the international standard.²⁰⁸ Thai QR Payment allows mobile banking consumers of any Thai bank to scan QR codes to make payments.²⁰⁹ It supports a cashless society and replaces cash on delivery.²¹⁰ On the one hand, the user can simply scan and pay in a variety of

¹⁹⁹ ETDA, *Thailand Internet User Behavior 2022*, at 9.

²⁰⁰ Bank of Thailand, *PromptPay: the Game Changer for Payments* [in Thai], https://www.bot.or.th/Thai/BOTMagazine/Pages/256303_TheKnowledgePromptPay.aspx (accessed 26 October 2022).

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ In the US, payment via "Zelle," is the latest payment system along with PayPal or Venmo. The special feature of Zelle is the faster speed of payment between the sender's bank and the receiver's bank. Zelle can be registered by mobile number and email with a bank. However, Zelle is used between individuals and not for official governmental purposes. For further information, please see <https://www.zellepay.com/>.

²⁰⁶ Bank of Thailand, *E-Payment Master No. 4 (B.E. 2562-2564) (2019-2021) Plan* [in Thai], https://www.bot.or.th/Thai/PaymentSystems/PolicyPS/Documents/PaymentRoadmap_2564.pdf, at 9.

²⁰⁷ Bank of Thailand, PromptPay, *supra* note 200.

²⁰⁸ Bank of Thailand, *The Progress of Thai QR Payment & Bill Payment* [in Thai], https://www.bot.or.th/Thai/PaymentSystems/FinTech/Documents/QRCodeAndBillPayment_17Nov2017.pdf.

²⁰⁹ *Ibid.*

²¹⁰ Bank of Thailand, E-Payment Master, *supra* note 206, at 40.

ways, such as using a bank account, a debit card, a credit card, or an e-wallet.²¹¹ On the other hand, all stores, including department stores, online stores, and even vendors on the street, can also use this QR Code.²¹² Most importantly, this payment QR Code can be used for both domestic and cross-border payments, for instance, between Thailand and other countries such as Singapore, Lao People's Democratic Republic, Japan, Cambodia, and Indonesia.²¹³

The Payment Systems Act B.E. 2560 (2017) was enacted to enhance the supervision of electronic payments and came into effect in 2018.²¹⁴ The Act authorizes the Minister of Finance, upon the advice of the Bank of Thailand (BOT), to prescribe regulated designated payment systems.²¹⁵ The Act also requires the business providers of the designated payment services, such as credit cards, debit cards, or electronic money services, to obtain a license from the Minister of Finance or to register with the BOT before operating.²¹⁶

iii. Delivery

Another important factor in e-commerce is logistics. In Thailand, as in other parts of the world, competition among logistics companies is intense. The income of the Postal Service of Thailand has dropped dramatically, and it has lost its market share to other companies, such as Kerry Express, J&T Express, and Flash Express, for general parcels.²¹⁷ In addition to these companies, there are other shipping companies in Thailand, such as Grab and Lineman, which not only ship packages but also allow consumers to order food, do grocery shopping, and call a taxi using their services.²¹⁸ They all hold significant market shares in the logistics sector.

The provision of the CCC concerning sales contracts will also apply to online sales contracts. The underlying principle is that although the ownership of the goods sold is transferred to the consumer buyer from the time the contract is formed,²¹⁹ the seller is still bound by a contract to deliver the goods sold to the buyer—by doing anything that has the effect of putting the goods at the buyer's disposal.²²⁰

²¹¹ Bank of Thailand, PromptPay, *supra* note 199.

²¹² *Ibid.*

²¹³ *Ibid.*; Bank of Thailand, Joint Press Release Indonesia and Thailand Launch The Implementation of Cross-border QR Payment Linkage, https://www.bot.or.th/English/AboutBOT/Activities/Pages/JointPress_29082022.aspx (accessed 26 October 2022).

²¹⁴ Bank of Thailand, Payment Systems Act B.E. 2560 (2017), https://www.bot.or.th/English/PaymentSystems/PSA_Oversight/Pages/default.aspx (accessed 26 October 2022).

²¹⁵ The Payment Systems Act B.E. 2560 (2017), s. 12.

²¹⁶ The Payment Systems Act B.E. 2560 (2017), s. 16.

²¹⁷ Thansettakij, Through the Budget: "Thailand Post" Cannot Hold Any Longer and Adjust the Shipping Price after a Loss of More Than 1.6 Billion [in Thai] (8 July 2022), <https://www.thansettakij.com/insights/531940>.

²¹⁸ Grab, <https://www.grab.com/th/> (accessed 26 October 2022); Lineman, <https://lineman.line.me/> (accessed 26 October 2022).

²¹⁹ The Civil and Commercial Code, s. 458.

²²⁰ The Civil and Commercial Code, s. 461 and 462.

E-commerce has changed the typical regime of sales contracts. Consumers no longer go to the physical shop and take possession of the goods on payment. In online contracts, sellers need to contact a shipping company and enter into an ancillary contract for the carriage of goods²²¹ in order to ship products to consumers. In Thailand there have been many cases of sellers asking consumers to contact shipping companies to complain of non-delivery of goods purchased under online sales contracts. Under the CCC, sellers cannot claim they have already fulfilled their obligations once they have delivered the goods to the shipping company. Sellers are only released from their obligations under sales contracts once the goods are delivered to consumers.

3. Procedural law

Thailand has a specific law to deal with consumer cases brought before the court. This is the Consumer Case Procedure Act B.E. 2551 (2008). The Act has been revised twice, most recently in 2015.²²² The Act authorizes the President of the Supreme Court to issue regulations to implement this law.²²³ The Act has three clear objectives: to make it easier for consumers to bring legal actions before courts, to allow consumer cases to proceed promptly, economically, and efficiently.²²⁴ A brief explanation of the principles is as follows.

The trial date must be set within 30 days of the acceptance of the claim,²²⁵ and the Court of Appeal must decide the case within one year from the filing date.²²⁶ The Act exempts all consumers and persons filing a case on behalf of consumers from all court fees, which makes consumer cases to proceed more economically than general civil cases.²²⁷ Consumers may file a claim before the court regardless of the value or the amount in dispute.²²⁸ Lastly, many procedures are simplified. For example, the plaintiff and the defendant in a consumer case can plead orally before the court with the help of an officer assigned to the case, called the Case Officer.²²⁹ More importantly, the Act allows the CPB, any association, or any foundation approved by the CPB to take legal action and proceed with a consumer case on behalf of a consumer.²³⁰

²²¹ The Civil and Commercial Code, s. 610.

²²² The Consumer Case Procedure Act (no. 2) B.E. 2556 (2013) and The Consumer Case Procedure Act (no. 3) B.E. 2558 (2015).

²²³ The Regulation of the President of Supreme Court on the Procedure and the Functions of the Official in the Consumer Case B.E. 2551 (2008).

²²⁴ The remarks at the end of the Consumer Case Procedure Act. Pairoj Vayuparb, *The Explanation of the Consumer Case Procedure* [in Thai], 3rd ed. (Bangkok: Krung Siam Publishing, 2016), 6-8; Auen Kunkeaw, *Consumer Case Procedure Law*, [in Thai], 4th ed. (Bangkok: Krung Siam Publishing, 2019), 3-4.

²²⁵ The Consumer Case Procedure Act B.E. 2551 (2008), s. 24; the Regulation of the President of Supreme Court on the Procedure and the Functions of the Official in the Consumer Case B.E. 2551 (2008), no. 9.

²²⁶ The Regulation of the President of Supreme Court on the Procedure and the Functions of the Official Case in the Consumer Case B.E. 2551(2008), no. 37.

²²⁷ The Consumer Case Procedure Act B.E. 2551 (2008), s. 18.

²²⁸ Nevertheless, to appeal the case before the Appellate Court or the Supreme Court, the value of the property or the amount under dispute in the case must follow the provisions of the law (it must exceed THB fifty thousand or the amount prescribed in the Royal Decree for the Appellate Court and is more than THB two hundred thousand for the Supreme Court) The Consumer Case Procedure Act B.E. 2551 (2008), ss. 47, 51.

²²⁹ The Consumer Case Procedure Act B.E. 2551 (2008), ss. 4, 20, and 26.

²³⁰ The Consumer Case Procedure Act B.E. 2551 (2008), s. 19.

Furthermore, in order to achieve the objective of the Consumer Case Procedure Act, the law renders pre-litigation mediation on the court date mandatory for all consumer cases.²³¹ A Case Officer, the person appointed by the court or the person agreed by the parties, will attempt to mediate and facilitate an amicable settlement between the parties.²³² If the mediation is successful, the mediator draws up a settlement agreement, and the plaintiff withdraws the case.²³³ Conversely, if the mediation fails, the case will continue before the court.²³⁴

In the wake of the COVID-19 pandemic, court proceedings were delayed due to the lockdown measures. In response to this problem, the President of the Supreme Court issued the Regulation on Electronic Procedures B.E. 2563 (2020) to facilitate all court proceedings.²³⁵ This Regulation is linked to the President of the Supreme Court Regulation on Submitting, Sending, and Receiving Pleadings and Documents via the Electronic Filing System B.E. 2560 (2017). As a result, Thai courts can now conduct full-scale online proceedings for all types of civil cases, marking a significant transition from offline to online court proceedings in Thailand. This new procedure will genuinely benefit disputes arising from e-commerce since consumers may seek redress online, through mediation or legal action filed with the court.

In addition, the Act enables the provisions of the Civil Procedure Code to apply in consumer cases *mutatis mutandis*. The Civil Procedure Code's significant provisions relating to consumers govern "*class actions*."²³⁶ The provisions on class actions were first introduced to the Civil Procedure Code in 2015.²³⁷ The class action, according to the Civil Procedure Code, is a case involving a group of persons having the same interests and rights²³⁸ arising from "*tort, breach of contract, and other laws including those concerning the environment, consumer protection, labor, securities and stock exchange, and competition/antitrust*."²³⁹ The class action provisions can facilitate consumers' access to the justice system.

C. Institutional actors

With the powers conferred by the aforementioned substantive laws, two main institutional actors will handle any disputes arising in e-commerce between consumers and businesses: courts and out-of-court alternative dispute resolution.

²³¹ The Consumer Case Procedure Act B.E. 2551 (2008), s. 24.

²³² The Consumer Case Procedure Act B.E. 2551 (2008), s. 25.

²³³ The Regulation of the President of Supreme Court on the Procedure and the Functions of the Official Case in the Consumer Case B.E. 2551 (2008), no. 16.

²³⁴ The Consumer Case Procedure Act B.E. 2551 (2008), s. 26; The Regulation of the President of Supreme Court on the Procedure and the Functions of the Official Case in the Consumer Case B.E. 2551 (2008), no. 17.

²³⁵ For further information, see Chandler MHN, Electronic Hearings in Thai Civil Court Procedures, 2021, <https://www.chandlermhn.com/content/files/pdf/Newsletter/2021/CMHM%20Newsletter%20-%20Electronic%20Hearings%20in%20Thai%20Civil%20Court%20Procedures%201%20August%202021.pdf>.

²³⁶ The Consumer Case Procedure Act B.E. 2551 (2008), s. 7.

²³⁷ The Act on Amending the Civil Procedure Code (No. 26) B.E. 2558 (2015) adds sections 222/1-222/49.

²³⁸ The Civil Procedure Code, s 222/1.

²³⁹ The Civil Procedure Code, s 222/8. More detail please see UNCTAD Peer Review, *supra* no. 29, at 25-26; Tilleke & Gibbins, *Class Action Legal Proceedings Now Available in Thailand*, 20 April 2015, <https://www.tilleke.com/insights/class-action-legal-proceedings-now-available-thailand/>.

1. Courts

Unlike other countries, Thailand does not have consumer claims or small claims courts.²⁴⁰ Consequently, the consumer cases are submitted to a general court under a special procedure established under the Consumer Case Procedure Act.

In recognizing the increase in e-commerce disputes, the court recently established the “*Online Shopping Division of the Civil Court*” in January 2022.²⁴¹ The consumer cases that can be submitted to this court division fall under three areas: **(1)** sales contracts concluded online via online platforms, websites, and email; **(2)** payments for products and services via the internet; **(3)** logistics related to sales contracts concluded via the internet.²⁴² The consumers or injured parties can start by filing a case on <https://efiling3.coj.go.th/eFiling/#/> or the Civil Court’s website.²⁴³ From that point onward, all communications between the court and the parties to the cases (email address and Google Meet) and court proceedings (trial, mediation, judgment) will be completely conducted online.²⁴⁴ However, the Division only accepts Thai parties to a contract since the registration for filing a case requires a Thai national ID.²⁴⁵ The door is still closed for cross-border cases if one party is a foreigner wishing to file a case with the Online Shopping Division of the Civil Court.²⁴⁶ Nonetheless, it is a significant development in Thai history to have mediation and court proceedings for disputes arising from online e-commerce sales to be conducted entirely online.

2. Out-of-court /alternative dispute resolution

Thailand has two government agencies that deal with e-commerce, the Office of the Consumer Protection Board (OCPB) and the Electronic Transaction Development Agency. The

²⁴⁰ UNCTAD Peer Review, supra no. 29, at 16.

²⁴¹ The Declaration of the Civil Court regarding the Opening of Online Shopping Division of the Civil Court B.E. 2565 (2022) The Division opened on 27 January 2022.

²⁴² The Civil Court, Online Shopping Division [in Thai], <https://civil.coj.go.th/th/content/category/detail/id/22/iid/277616/> (accessed 26 October 2022).

The Online Shopping Division will not accept sales of contract concluded on TV Direct, telephone, fax, or other channels which is not online.

²⁴³ Ibid.

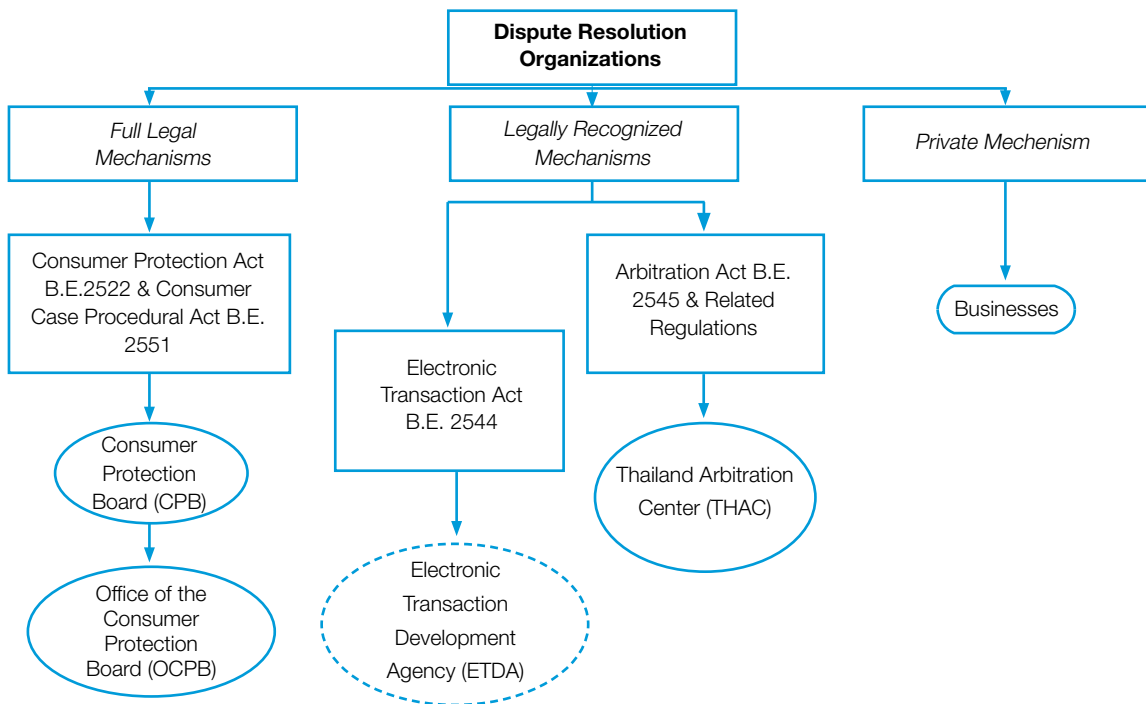
²⁴⁴ The Notification of the Office of the Court of Justice regarding the Principles, Means, and Condition relating to the Electronic Procedures for Online Sales Cases B.E. 2565 (2022), no. 4.

²⁴⁵ The Civil Court, supra note 242.

²⁴⁶ Judge Sorawit Limparangsi (Spokesman for the Court of Justice) online interview via Zoom on 14 June 2022; The Court of Justice, The Manual of e-Filing of Pleadings via Electronic Media, 2022, at 6, https://drive.google.com/file/d/1SY9c80UtoE5ymV_QB7tbPVQfo3Qc5gzE/view; UNCTAD Peer Review, supra no. 29, at 17.

Thailand Consumer Council is a public arbitration body,²⁴⁷ while associations,²⁴⁸ and NGOs provide early steps for resolving consumer disputes, suggestions, recommendations, consultations, or negotiations. Figure 8 illustrates the alternative dispute resolution for consumer disputes in Thailand. The table shows that there are essentially four ways for consumers to access alternative dispute resolution based on conciliation, negotiation, and mediation: **(1)** The Consumer Protection Board and the Office of the Consumer Protection Board; **(2)** the Electronic Transaction Development Agency; **(3)** the Thailand Arbitration Center; and **(4)** the Business in-house CDR and customer service including private platforms for dispute resolution. This section presents the out-of-court institutional avenues for consumers to seek dispute resolution in the online context. Such initiatives are offered through online means and are equivalent to ODR.

Figure 8
Dispute resolution bodies

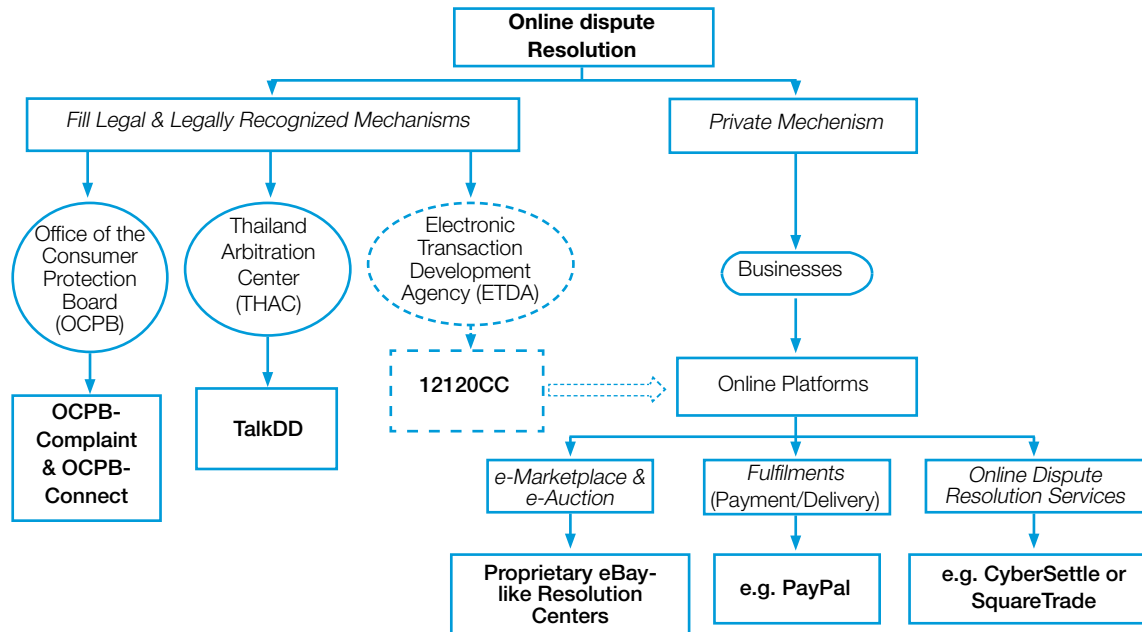


²⁴⁷ Section 46 of the 2017 Constitution mandates consumer organizations to independently and collectively protect and safeguard consumers' rights by making recommendations to enhance consumer protections or suggestions to resolve consumers' disputes to the relevant government agencies; supporting consumers in knowing, understanding, and defending their rights; promoting better understanding of consumer protection and research; and being actively involved in dispute resolution using negotiation, mediation, and other alternatives in various stages of disputes. Accordingly, Thailand Consumers Council was founded in 2019 through the enactment of the Establishment of the Council of the Consumer Organization Act B.E. 2562 (2019). For further details, please see UNCTAD Peer Review, *supra* note 29, at 40-42.

²⁴⁸ The most active and the longest established one is the Foundation for Consumers (FFC). FCC, <https://www.consumerthai.org/>, <https://ffcthailand.org/>; many consumer associations, consumer networks – both offline and online (employing social networking and social media to get together) – and some non-governmental organizations (NGOs) work to protect consumers' rights and also participate in dispute resolution. Many of these organizations have since joined the Thailand Consumers Council. For more details, please see UNCTAD Peer Review, *supra* note 29, at 28.

Nevertheless, this section presents only those bodies and organizations that provide ODR systems, which are 1) the OCPB; 2) ETDA; 3) THAC; and Business platforms, as illustrated in Figure 9.

Figure 9
ODR



A. The Consumer Protection Board (CPB) and the Office of the Consumer Protection Board (OCPB): OCPB Connect

The CPA mandates the OCPB to protect consumers by receiving complaints, assisting consumers whose rights have been infringed or injured by business practices, monitoring how businesses operate in the market and educating consumers.²⁴⁹ The OCPB has a number of dispute resolution functions, in particular receiving complaints made by consumers who have suffered loss or damages as a result of the actions of businesses and submitting them to the Consumer Protection Board (CPB).

The OCPB is a mainstay for consumers seeking protection at all levels, including in the context of e-commerce disputes. Thai consumers can contact the OCPB to file their complaints in person via a dedicated call center (Call 1 166) and online (web-based and application), called “OCPB Connect.”²⁵⁰

The Consumer Protection Board (CPB) and its Office – OCPB – have launched an online platform for consumer protection, called OCPB Connect. OCPB Connect has four main functions: **(i)** providing information on the status of businesses or entrepreneurs from 32 regulatory bodies, enabling consumers to learn about the trustworthiness of businesses; **(ii)** disseminating information, warnings, and knowledge for consumers; **(iii)** analysing consumer protection performance and statistics; and **(iv)** filing complaints and enquiries on the progress of complaints. OCPB Connect is accessible through the OCPB website and a dedicated application on Android and iOS smartphones.²⁵¹ It should be noted that OCPB Connect is not a purely online system but merely a portal for communicating with consumers and allowing them to submit their complaints online and monitor their progress. The remaining aspects of the dispute resolution process essentially remain to continue to be operated manually using information technology to facilitate communication between the disputing parties and the relevant officials. In other words, this regime only eliminates face-to-face communication during the dispute resolution process while the overall procedure remains the same.

When filing complaints, consumers can opt for online mediation, provide relevant information, and attach documents.²⁵² After submitting their complaints, consumers can track the status of such complaints in the system.²⁵³ The most important part of the OCPB’s ODR is that the entire mediation process will be conducted online, which genuinely facilitates the resolution of e-commerce consumer disputes both domestically and internationally.²⁵⁴ If a consumer opts for online mediation, the OCPB officer will set a date and time for the online meeting.²⁵⁵ At the online meeting, the OCPB’s qualified officer will attempt to mediate consumer-business dispute.²⁵⁶ If the mediator reaches a mutually acceptable agreement,

²⁴⁹ The Consumer Protection Act B.E. 2522 (1979), s. 10(1) and 20(1).

²⁵⁰ The OCPB, *Consumer Complaint Center* [in Thai], <https://www.ocpb.go.th/ewtadmin/ewt/department/index.php> (accessed 1 November 2021).

²⁵¹ The OCPB, *OPCD Connect*.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ More details about the OCPB’s ODR process can be found in UNCTAD Peer Review, *supra* no. 29, 32-33.

²⁵⁵ *Ibid.*, at 33.

²⁵⁶ *Ibid.*

the mediator will draft a settlement agreement.²⁵⁷ Both parties must confirm the agreement within three days for it to become effective;²⁵⁸ otherwise, the mediation is deemed terminated.²⁵⁹ Alternatively, if the first mediation fails, another online mediator will attempt to resolve the dispute a second time.²⁶⁰ Finally, if neither mediation attempt results in a resolution, the complaint will be submitted to the Consumer Complaint Mediation Sub-Committee for further consideration.²⁶¹

During mediation, either party has the right to terminate the mediation process at any stage.²⁶² If the mediation is unsuccessful, a consumer still has the right to take legal action before the court. Submitting a complaint to the OCPB does not preclude a consumer's right to bring court actions.²⁶³ The current statistics of OCPB Connect show that it has already received around 180,000 complaints.²⁶⁴

According to OCPB, out of these 180,000 complaints, an average of approximately 35 per cent were related to the sale of goods.²⁶⁵ The rest were related to services, such as hotel bookings and airline tickets, gyms and fitness, beauty services, and real estate. Only one foreign company (without a subsidiary in Thailand) was involved in disputes, BigLife Sdn Bhd of Malaysia, with 88 complaints; this company, in turn, is the subsidiary of Air Asia that manages the airline's loyalty program. This means that consumers who have disputes with BigLife Sdn Bhd must have concluded transactions with Air Asia before being eligible to participate in the loyalty scheme.²⁶⁶ Given the limited information available on such disputes, it is unclear whether these complaints can be considered e-commerce disputes. However, they are cross-border and involve the Malaysian company. Even if they were cross-border e-commerce, only 88 out of 180,000 complaints constitute less than 0.05 per cent, thereby rendering the use of OCPB by disputing parties in the context of cross-border e-commerce insignificant.

²⁵⁷ Ibid.

²⁵⁸ The Regulation of the CBP on the Rules for Mediating or Compromising Disputes in connection with the violation of consumers' rights (B.E. 2559) (2016), no. 16. If the parties confirm the agreement, the consumer is no longer entitled to file a case with the court. The rights and obligations under the agreement will be binding on both parties.

²⁵⁹ UNCTAD Peer Review, *supra* no. 29, at 33.

²⁶⁰ The Regulation of the CBP on the Rules for Mediating or Compromising Disputes in connection with the violation of consumers' rights (B.E. 2559) (2016), no. 12.

²⁶¹ The Regulation of the CBP on the Rules for Mediating or Compromising Disputes in connection with the violation of consumers' rights (B.E. 2559) (2016), no. 13 and 14.

²⁶² The Regulation of the CBP on the Rules for Mediating or Compromising Disputes in connection with the violation of consumers' rights (B.E. 2559) (2016), no. 15.

²⁶³ The Regulation of the CPB concerning the Performing Public Service of the Provincial Consumer Protection Sub-Committee (B.E. 2562), no.6(2).

²⁶⁴ The OCPB, *the OCPB Complaint*.

²⁶⁵ The OCPB, the Statistics of Complaints of Governmental Authorities on Consumer Protection by Category [in Thai], https://ocpbconnect.ocpb.go.th/Report/Detail?report_id=0C3F98E3-783A-4EDA-82BC-AC84ADA9812C (accessed 1 November 2021).

²⁶⁶ The OCPB Connect, the Report of the Businesses under the CPB: Legal Proceedings and Terminations [in Thai], https://ocpbconnect.ocpb.go.th/Report/Detail?report_id=EA32E413-5D9F-45F2-8623-143C9BF08F15 (accessed 1 November 2021).

B. Electronic Transaction Development Agency (ETDA): 1212 ETDA

The Electronic Transaction Development Agency (ETDA) was established in 2011 by the authority of the ETA as the public regulator and facilitator of electronic transactions.²⁶⁷ Subsequently, ETDA was transformed from a public organization into a governmental agency under the Establishment of the Electronic Transactions Development Agency (ETDA) Act B.E. 2562 (2019).²⁶⁸

ETDA's hosts its Online Fraud and Complaint Center, which proposes various contact channels, including Hotline 1212, email: 1212@mdes.go.th, website: www.1212OCC.com, and Facebook Messenger on Facebook Page "1212 ETDA" (<https://www.facebook.com/1212ETDA>).²⁶⁹

1212 ETDA is not an actual ODR system but rather a clearing house for complaints²⁷⁰ – matching complaints with the relevant competent authorities.²⁷¹ It provides a basis for effective solutions. ETDA cooperates with many online platforms, including the major e-marketplaces and the online mall. If the complaint concerns cooperating platforms, ETDA will act as a third party to informally seek solutions with respective platforms through cooperation with these platforms.²⁷² This approach is effective because establishing cooperation with ETDA enhances the platforms' reputations as honest and cooperative; regardless of the type of dispute that may arise, the respective platforms are willing to resolve matters in order to enhance their reputation.

C. Thailand Arbitration Center (THAC): TalkDD

THAC is a public organization²⁷³ established by the Arbitration Center Act B.E. 2550 (2007).²⁷⁴ It provides alternative dispute resolution through both mediation and arbitration and promotes and develops mediation and arbitration in Thailand. The Ministry of Justice supervises THAC,²⁷⁵ but its committees are composed of government officers and private sector

²⁶⁷ The Royal Decree of the Establishment of the Electronic Transactions Development Agency (Public Organization) B.E. 2554 (2011).

²⁶⁸ The Electronic Transaction Act B.E. 2544 (2001), amended (January 2019), s. 4; The Establishment of the Electronic Transactions Development Agency (ETDA) Act B.E. 2562 (2019).

²⁶⁹ ETDA, Online Fraud and Complaint Center, <https://1212etda.com/Home/Index> (accessed 26 October 2022).

²⁷⁰ The Online Fraud and Complaint Center offers consultation and a platform to report problems concerning illegal websites (lèse-majesté, gambling, pyramid schemes, online investment scam, online loan scam), online sales of goods and services (e.g., later delivery, non-compliance to sales contracts, defect of products), cyber threats (e.g., hacking, fake news) and other inquiries relating to the information and technology laws (e.g., the Computer Crimes Act, the Electronic Transaction Act).

²⁷¹ In 2021, the Center reported 54,348 complaints, with an average of 4,529 complaints per month, which increased 20 per cent from the previous year. The largest category of complaints refers to online sales of goods and services – Information provided by the ETDA through an online interview.

²⁷² ETDA, *Found-Filed-Finished: End Your Online Problem at 1212* [in Thai], <https://www.etda.or.th/th/pr-news/Proactive-1212-OCC.aspx> (accessed 1 November 2021).

²⁷³ Office of the Public Sector Development Commission (OCPD), *Public Organization Established by Specific Act*, <https://po.opdc.go.th/content/MTq4> (accessed 26 October 2022).

²⁷⁴ THAC, About Us, <https://thac.or.th/about-us-2/> (accessed 26 October 2022).

²⁷⁵ The Arbitration Center Act B.E. 2550 (2007), s. 4.

representatives.²⁷⁶ Its services tend to compete with other arbitrators that disputing parties may choose, both in Thailand and abroad. Any arbitration ruling, including one issued by THAC, would be recognized under the Arbitration Act B.E. 2545.

THAC established another online mediation and arbitration platform called TalkDD in 2016.²⁷⁷ The operation of TalkDD could be considered an actual ODR since its online system replaces all traditional negotiation, conciliation, and mediation procedures.²⁷⁸ However, its popularity remains questionable, which may be due to legal aspects (i.e. definition, scope, the online environment of negotiation, conciliation, and mediation, enforceability of the ruling, and relevant laws), and administrative aspects (i.e. implementation of IT, practicality of ODR, and responsible authorities).²⁷⁹ Since the ruling is not final and enforceable and does not preclude disputing parties from seeking justice through ordinary court proceedings, this may contribute to its popularity. TalkDD seems to be one of the effective options for cross-border e-commerce dispute resolution. Apparently, TalkDD has never handled a cross-border e-commerce dispute, and the disputes handled through TalkDD are related to intellectual property.²⁸⁰

Moreover, from the perspective of cross-border e-commerce disputes, Thailand's dispute settlement and resolution systems are not sufficiently aware of cross-border e-commerce transactions but tend to be domestically focused. TalkDD appears to be the only ODR that could potentially deal with cross-border e-commerce disputes, as it is developed according to the UNCITRAL model.

D. E-commerce platforms and other private schemes

Typically, the first way to resolve cross-border disputes is to contact the seller online. The Thai CCC governs the relationship between the seller and the buyer. For example, once consumers agree and use the services provided by Shopee, they will be bound by the terms and conditions of Shopee under the general principle of contract law as set out by the CCC. Based on Shopee's terms and conditions, the dispute resolution between the buyer and the seller over their platform will be carried out as per the platform's policy.²⁸¹ At its discretion, Shopee may act as a third-party mediator to help resolve disputes between parties, i.e., sellers and buyers.²⁸²

²⁷⁶ The Arbitration Center Act B.E. 2550 (2007), s. 12.

²⁷⁷ THAC, *The History of THAC* [in Thai] (2018), https://thac.or.th/v1/theme/file_system/20191004211026.pdf; IT24Hrs, *TalkDD, Online Mediation Medium If the Buying and Selling Does Not Go As Agreed*, <https://www.it24hrs.com/2016/talkdd-odr-online-dispute-resolution-thac/> (accessed 1 November 2023).

²⁷⁸ THAC, TalkDD Login, <https://odr.thac.or.th/auth/login> (accessed 1 November 2021); THAC, *Knowing TalkDD: the Online Alternative Dispute Resolution*, <https://thac.or.th/th/talkdd-online-dispute-mediation-2022/> (accessed 1 November 2021); IT24Hrs, *TalkDD: the Intermediary for Negotiating if Buying-Selling Is Contradict to What You Have Agreed* [in Thai], <https://www.it24hrs.com/2016/talkdd-odr-online-dispute-resolution-thac/> (accessed 1 November 2021).

²⁷⁹ Sireekarn Yooruang, *Legal Measures regarding the Enforcement of Online Dispute Resolution in Thailand* [in Thai], (LL.D. Dissertation, Thammasat University, 2019).

²⁸⁰ Nuangchamnonng, Thanida (Legal Counsel of Thailand Arbitration Center) email message on 21 October 2022.

²⁸¹ Shopee, *Terms of Service* (in Thai), no. 21.1, <https://help.shopee.co.th/portal/article/77241?previousPage=other%20articles> (accessed 1 November 2023).

²⁸² *Ibid.*, no. 21.3.

Similarly, consumers will be bound by the terms and conditions of Lazada once they agree to use the services provided by Lazada. Nonetheless, Lazada opts for arbitration for all disputes or claims arising from its contracts between Lazada and users, including consumers. The Rules for Arbitration of the Thai Arbitration Institute (TAI) govern such claims.²⁸³

Businesses play a key role in developing ODR, as in other parts of the world, where market operators such as Amazon and eBay have taken on this role. The government should promote the free market and let businesses resolve issues resulting from e-commerce with consumers. Nevertheless, in Thailand, competition among businesses is not strong enough to allow them to regulate the market on their own. Without intervention, consumers are likely to be taken advantage of. Thus, Thai consumer protection needs to be regularly monitored and updated to ensure a high level of protection for consumers, and Thai authorities need to monitor the market closely and intervene whenever deemed appropriate.

²⁸³ Lazada, Terms and Conditions, no. 11.8, https://pages.lazada.co.th/wow/gcp/route/lazada/th/upr_1000345_lazada/channel/th/upr-router/th?spm=a2o4m_tm80185632_4913895060_2_424bAqQaQaY1&hybrid=1&data_prefetch=true&prefetch_replace=1&at_iframe=1&wh_pid=/lazada/channel/th/central/TermsOfsale&trafficSource=TI (accessed 26 October 2022).

Chapter IV. Conclusions

The United Nations Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases, as recommended by the United Nations Guidelines for consumer protection.²⁸⁴ Thailand's Voluntary peer review of consumer protection law and policy recommended that existing consumer protection policies be reviewed to accommodate the special features of e-commerce and to ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.²⁸⁵ In particular, the review asked that Thailand's legal framework on electronic transactions specify the minimum standards of consumer complaints handling services. This is even more relevant when dealing with cross-border e-commerce consumer disputes.

Although cross-border e-commerce consumer disputes are not currently reported in Thailand, their importance should not be underestimated. The contribution of cross-border e-commerce to the expansion of e-commerce in Thailand is undeniable, given the slower growth of domestic e-commerce in recent years. For this reason, cross-border e-commerce dispute resolution will be key to the sustainable and inclusive development of e-commerce in Thailand.

The analysis presented in Chapter III highlights the suboptimal state of e-commerce consumer markets in Thailand, particularly in terms of effective consumer protection laws tailored to the digital environment. This shortcoming is at odds with the regional direction set by ASEAN, which underscores the importance of robust consumer protection legislation. Alignment with ASEAN's vision is necessary for enhancing consumer welfare and levelling the playing field for Micro, Small, and Medium-sized Enterprises (MSMEs) in regional e-commerce, thereby catalyzing economic development.

As cross-border e-commerce disputes are expected to arise with major international trading partners, including China, Japan, the Republic of Korea, and others, it is advisable for Thailand to establish a coherent and uniform system for legally sanctioned dispute resolution.

Thailand's consumer legal framework is fragmented, with numerous laws, agencies, and organizations offering overlapping alternative dispute resolution mechanisms. While some

²⁸⁴ [United Nations Guidelines for Consumer Protection.](#)

²⁸⁵ [Voluntary peer review of consumer protection law and policy: Thailand \(unctad.org\).](#)

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private mechanisms have proven effective, Thailand can encourage more competition among private sector operators, especially online platforms, in providing ODR services to consumers. Regulatory responsibility for these private ODRs could be entrusted to either the OCPB or the ETDA – subject to state authority.

In any case, consumers' vulnerabilities in dealing with different ODR systems should be taken into account when drafting laws and policies.

Encouraging private sector ODR competition while enforcing minimum standards through public monitoring will be crucial for a robust cross-border e-commerce dispute resolution framework in Thailand that contributes to the sustainable and inclusive development of Thai society.

Chapter V

Recommendations

With the rapid technological advancement and the increase in cross-border e-commerce transactions, the ODR system stands out as the most promising solution for resolving cross-border consumer disputes.²⁸⁶ Thailand is part of the ASEAN ODR Network for consumers. To move forward in this endeavor, it is recommended that Thailand formulates and implements tailored national policies, laws, and regulations to effectively and expeditiously resolve cross-border e-commerce consumer disputes. The following recommendations are aimed at strengthening and enhancing Thailand's consumer protection framework in digital markets.

A. Public policy initiatives

1. Legislation

- Review and update of existing consumer protection laws to take account of the specific features of e-commerce and ensure the compliance and enforcement of these laws.
- Ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.
- Explicitly state that e-commerce is subject to all consumer protection laws and regulations, unless explicitly indicated otherwise, and set clear minimum standards for handling consumer complaints on digital platforms.

2. ODR systems

- Improve the ODR system by improving user interfaces to cater for consumers with different levels of digital literacy.
- Ensure that the ODR system handles disputes efficiently and transparently, prioritizing the protection and security of users' data.
- Mandate strict data security standards and offer a variety of payment options, taking into account consumers' preferences.
- Enforce a gatekeeper role and third-party involvement for e-commerce platform providers, holding them accountable for the actions of online sellers on their platforms.

²⁸⁶ E Van den Heuvel; Feasibility Study, *supra* note 72, at 7; Consumer Trust in the Digital Economy, *supra* note 14.

- Assess whether the responsibility and liability regimes for online platforms are commensurate with consumers' interests and the level of involvement of online platforms in the consumer transaction; ensure that consumers and third-party sellers are aware of the responsibility regime that is applicable to their transaction on the online platform.
- Establish mechanisms for allocating consumer complaints to relevant public authorities.

3. Promotion and regulation of e-commerce platforms

- Promote e-commerce platforms' ODR mechanisms to ensure compliance with minimum legal and regulatory requirements set by the government.
- Encourage healthy competition among e-commerce platforms in providing ODR solutions to increase consumer choice while protecting their interests.

4. E-commerce regulator

- Appoint a regulator to oversee the entire consumer e-commerce ecosystem, including domestic and cross-border activities, and to lead coordination with other government agencies with interests in ODR.
- Empower this regulator to take proactive measures to prevent disputes and ensure compliance with consumer protection laws.
- Consider delegating regulatory oversight of private consumer ODRs to the Office of the Consumer Protection Board (OCPB) or the Electronic Transactions Development Agency (ETDA) – subject to state approval.

B. Private sector participation

1. Adoption of ASEAN Guidelines

- Encourage e-commerce platforms in Thailand to adopt the ASEAN Guidelines on Accountabilities and Responsibilities of e-marketplaces.

2. E-commerce platform engagement

- Encourage e-commerce platforms to establish their own ODR systems to promote a fair and trustworthy trading environment.
- Encourage businesses to implement internal complaint-handling mechanisms that prioritize speed, fairness, transparency, affordability, and accessibility.
- Subject these ODRs to regulatory oversight to ensure compliance with minimum public policy requirements.

C. Empowering consumers

1. Raising consumer awareness

- Strengthen educational and awareness campaigns through online and offline channels and applications provided by relevant authorities such as the OCPB and the ETDA.
- Focus on initiatives and campaigns that educate consumers about potential scams and frauds and their rights in e-commerce.
- Explore partnerships with businesses and consumer groups, including consumer associations, to raise consumer awareness.

2. Enhancing digital literacy and language skills

- Promote digital literacy and technological skills among e-commerce consumers and businesses – particularly micro, small and medium-sized enterprises, to enable them to make informed decisions and avoid disputes.

By implementing these recommendations, Thailand can create a more robust and consumer-friendly e-commerce environment while aligning with international standards such as the United Nations Guidelines for Consumer Protection. This comprehensive approach will contribute to increase consumer trust and protection, and to the overall growth of the e-commerce sector in the country.

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Judge Sorawit Limparangsi (Spokesman for the Court of Justice) online interview via Zoom on 14 June 2022.

Miss Thanida Nuangchamnon (Legal Counsel of Thailand Arbitration Center) email message on 21 October 2022.

