ASEAN-Australia Development Cooperation Program (AADCP)

Case Study
An Australian Government and ASEAN Initiative

Harmonisation of E-Commerce Legal Infrastructure in ASEAN
(A Program Stream Project: *Legal Infrastructure for E-Commerce in ASEAN*)

Background

With the growth of e-commerce, there is a global trend for countries to modify their commercial laws to remove barriers to online services and providing legal certainty and consistency to electronic transactions to business and citizens.

Countries report that the introduction of legal infrastructure that governs and protects e-commerce activities leads to increased ICT-related business opportunities and foreign direct investment. Such infrastructure is a fundamental enabler of ICT services such as:

- Legal recognition of online transactions
- Online retailing
- Internet banking

ASEAN Member Countries endorsed the e-ASEAN initiative in 1999. Designed to assist in ASEAN's overall aim of economic integration and the creation of a common market, a key element was the creation of an e-commerce friendly environment.

The AADCP *Harmonisation of E-Commerce Legal Infrastructure in ASEAN* Project was undertaken to assist the implementation of modern, best-practice and compatible laws - enabling ASEAN Member Countries to obtain the maximum benefit from the growth of e-commerce, both individually and as a region.

ASEAN is the first region in the developing world to adopt a harmonised e-commerce legal framework consistent across jurisdictions.

The project was implemented by Galexia - a Sydney-based consulting firm of legal and policy experts in e-commerce and new technologies.

Project Aims & Design

The project, as originally conceived, focused on the core issue of legal recognition of e-commerce. Participants in the project quickly realised that a larger scope was required to make a significant impact in the e-commerce sector, and the project was redesigned to include three phases:

- *Phase 1:* Understanding the existing laws in the region and implementing basic enabling clauses giving legal recognition to electronic documents and transactions;
- *Phase 2:* Harmonisation of approaches to electronic contracting law, online consumer protection and jurisdiction;
- *Phase 3:* Approaches to regional mutual recognition of digital signatures.
- *Phase 4:* Indonesian E-Commerce - Awareness Raising and Technical Assistance. The application of International and ASEAN best practice (developed in previous phases).

A number of other areas were not covered in the project - but are nevertheless significant aspects of e-commerce legal infrastructure. These include:

- Cybercrime legislation
- Privacy and data protection regulations
- Spam regulation

Harmonisation projects are designed to align individual country laws to remove unwanted gaps, overlaps and duplication. In e-commerce, the emphasis is typically placed on 'soft harmonisation' measures - training and capacity development activities - to ensure a common understanding of key issues. This project, however, also pursued 'hard harmonisation' measures. These centred on assisting countries to implement consistent laws and meet ASEAN implementation deadlines.

Project Activities

The project has included numerous activities and outputs over a four-year period, including:

- 9 full ASEAN Workshops (on average, 35 participants per workshop);
- 1 awareness raising workshop (150+ participants)
- 17 country visits;

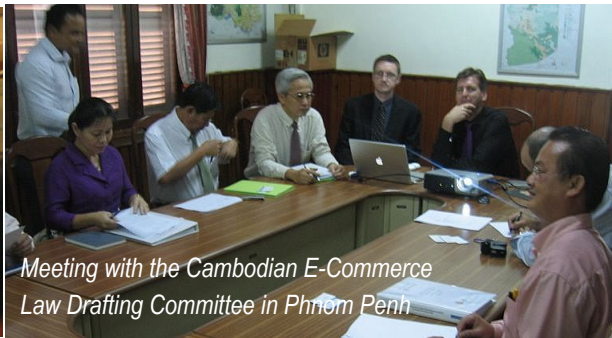*Training workshop on legislative analysis in Vientiane*

Meeting with the Cambodian E-Commerce Law Drafting Committee in Phnom Penh

By encouraging interactive participation among attendees from a wide variety of domestic agencies and stakeholders, and engaging directly with Member Countries where necessary, the project delivered best-practice legal implementations and stronger regional networks of knowledge

- 4 Regional surveys of existing infrastructure, implementation challenges encountered, existing cyberlaws, and existing e-contracting and dispute resolution policy;
- 3 Implementation Guides - setting out consensus recommendations for each phase developed at the workshops;
- Ongoing liaison with relevant international organisations such as APEC, UNCITRAL, UNCTAD and UNESCAP.

- Development of a regional community of experts,
- Fostering and mentoring key individuals in the regional community of experts – resulting in career advancement for a number of participants, improved presentation and participation skills and ongoing support and profile within the ASEAN Working Group, and
- Encouragement of intra-ASEAN networking, information and informal technical support.

of legislation and other 'hard harmonisation' measures, the project outcomes will continue to be effective regardless of personnel and policy changes.
- **Developing monitoring tools** – Implementation Checklists have been created for each Phase of the Project to support ongoing monitoring of implementation progress right up to the end of the e-ASEAN goals in 2015;

Project Achievements

The success of the project is fundamentally demonstrated by the improvement of the coverage of e-commerce enabling laws in the region:

Enabling E-Commerce Legislation

	Jan 04	Apr 08
Brunei	Enacted	Enacted
Cambodia	None	Draft
Indonesia	None	Enacted
Laos	None	Draft
Malaysia	None	Enacted
Myanmar	Draft	Enacted
Philippines	Enacted	Enacted
Singapore	Enacted	Enacted
Thailand	Enacted	Enacted
Vietnam	None	Enacted

The project's goals are highly strategic, and some of the most important achievements are in broad terms, including:
- Significant progress in regional understanding, drafting and reviewing domestic e-commerce laws to achieve harmonisation;
- Increased activity in the region developing legal and technical policy;

Sustainability

The project achievements are sustainable through a number of project outcomes.

- **Adopting international best practice** – e-commerce infrastructure, given its globalised nature, must conform to international standards and practices. The project has ensured that all harmonisation activities have involved major research of international initiatives, and that, wherever possible, international model laws and standards are implemented;
- **Promoting regional communication** – the project has encouraged measures to ensure communication and understanding between ASEAN Member Countries is maintained beyond the life of the project. For example, it has been a key requirement that all primary legislation and materials are made available in English, as well as being made available in electronic format for the project's online resources;
- **Establishing permanent laws** – by supporting the implementation

Project Lessons

Member Countries faced a number of constraints in the implementation of the project:
- Obtaining government policy support;
- Identifying sufficient funding;
- Obtaining relevant training and assistance.

A number of features of the project are instructive in mitigating these factors:
- Supporting wide and economical access to the project, by maintaining comprehensive online resources and distributing as CD-ROMS;
- Promoting a variety of attendees at workshops with both legal and technical backgrounds and from a variety of domestic agencies and stakeholders;
- Aligning workshop timing and location with major related meetings of ASEAN officials and ministers.

The project's success is a tribute to the enthusiasm, expertise and hard work of hundreds of participants throughout the region, many of whom are already carrying the work forward into other areas.

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