



## **Galexia Consulting to assist ASEAN harmonise electronic commerce**

**8 March 2004**

Galexia Consulting has won a competitive tender for a groundbreaking two-year project that will streamline electronic commerce in South East Asian nations.

Galexia Consulting is partnering with global law firm Baker & McKenzie to develop and implement a harmonised legal infrastructure for electronic commerce in ASEAN (Association of South East Asian Nations: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and VietNam).

The goal of the project is to assist ASEAN to integrate into one market for goods, services and investment by the establishment of a harmonised legal, regulatory and institutional environment for e-commerce. Additionally, there is an opportunity for some of the developing nations within ASEAN to 'leap-frog' paper based commerce and develop more efficient electronic transactions for cross-border trade. The project is the first of its kind to be conducted in the Asia Pacific region, and is second only to the European Union in its approach to legislatively facilitate borderless electronic transactions across a group of nations.

This project is funded by the ASEAN Australia Development Cooperation Program (AADCP) - Program Stream. AADCP is funded by the Australian Government, through AusAID and implemented in close collaboration with the ASEAN Secretariat and is managed by ACIL Australia Pty Ltd.

### **e-ASEAN Framework**

The e-ASEAN framework agreement states that members shall 'adopt electronic commerce regulatory and legislative frameworks that create trust and confidence for consumers and facilitate the transformation of businesses towards the development of e-ASEAN'.

It is envisaged the legal infrastructure may take the form of a regionally agreed model for consistent national laws supported by an appropriate infrastructure that will legally recognise the effectiveness of online transactions and facilitate their enforceability.

A harmonised legal infrastructure presents a great opportunity for technological and commercial advancement. The agreed framework and resulting laws will underpin increasing confidence in and use of electronic commerce by businesses, governments and consumers, both within and beyond ASEAN. To be effective beyond ASEAN the framework will reflect the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (1996) and the UNCITRAL Model Law on Electronic Signatures (2001).

## **UNCITRAL Model Law on Electronic Commerce (1996)**

The Model Law on Electronic Commerce is based on two principles:

1. Functional equivalence – paper documents and electronic transactions are treated equally by the law (Article 5); and
2. Media neutrality – the law does not discriminate between different forms of technology (Article 1 read with Article 2(a)).

These two principles are pivotal in ensuring that electronic transactions receive universal recognition. Transparency and predictability are the other desirable qualities in electronic commerce legislation - these will minimise legal uncertainty between contracting parties.

Existing laws in Singapore, the Philippines, Brunei and Thailand, are to a large extent based on the UNCITRAL Model Law on Electronic Commerce.

## **UNCITRAL Model Law on Electronic Signatures (2001)**

It is intended that Model Law on Electronic Signatures (2001) will operate as a supplement, or an extension to the Model Law on Electronic Commerce (1996).

Despite the wider adoption of the Model Law on Electronic Commerce, within ASEAN the Model Law on Electronic Signatures has only been adopted by Thailand.

Thailand enacted dedicated electronic commerce legislation in 2001 at which point it was convenient to incorporate both the 2001 and 1996 Model Laws. By this time other nations had enacted electronic commerce legislation based on the 1996 UNCITRAL Model Law, and have generally not made any subsequent alterations to their domestic legislation. There are a few countries that have adopted the Electronic Commerce Model Law after 2001 without adopting the Model Law on Electronic Signatures.

In the interests of promoting party autonomy many provisions of UNCITRAL's Model Law on Electronic Signatures (2001) can be contracted out of or varied by the mutual agreement of the parties. A flexible and expansive approach helps to facilitate the development of new techniques and technologies.

The Model Law on Electronic Signatures also promotes the same functional and media neutrality of its 1996 predecessor by providing that electronic signatures in any form should be treated equally provided they meet the minimum functional specifications required to guarantee the signature's integrity.

Generally, the Model Law on Electronic Signatures provides a broad legislative framework of sufficient detail to enable national governments to fill in the procedural 'blanks' needed to tailor the legislation to their national circumstances.

### **Website links**

**Australian Agency for International  
Development (AusAID)**  
<http://www.ausaid.gov.au>

**ASEAN Secretariat  
(Jakarta)**  
<http://www.aseansec.org>

**ASEAN Australia Development  
Cooperation Program (AADCP)**  
<http://www.aadcp.org>



**Australian Government**  
**AusAID**



### **About Galexia Consulting and Baker & McKenzie**

Galexia Consulting has expertise and experience in all aspects of electronic commerce law and provides expert analysis of PKI, authentication and digital signature regulatory issues to a range of local and international clients. Baker & McKenzie is one of the world's leading global law firms with significant experience and expertise in information technology law and offices in several ASEAN member nations.

Together, the team matches project management experience with legal expertise and technical understanding.

In addition Baker & McKenzie has detailed understanding on the UNCITRAL model laws and has served on the U.S. Delegation to the United Nations Commission on International Trade Law.

This project continues a successful relationship between Baker & McKenzie and Galexia Consulting. Previous projects have been run in Australia and Asia, including, the Internet Law Bulletin, international privacy compliance for a global telecommunications company, electronic authentication, digital copyright, national strategies for the Vocational Education and Training (VET) sector and digital document retention.

### **For more information**



**Galexia Consulting** delivers specialist management consulting services to our clients. Galexia Consulting has expert consultants in privacy, authentication, electronic commerce and new technology. We leverage our legal, business and technical knowledge to deliver successful business strategies to a diverse range of clients.

Our focus is on research, strategy and advice on electronic commerce, digital signatures, identification, authentication, security and privacy in Australia and the Asia Pacific.

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## **BAKER & MCKENZIE**

**Baker & McKenzie** is a global law firm with a number of offices Australia. With 68 locations in 38 countries around the world, they are uniquely positioned to provide legal advice to local, regional and global clients. Their 14 locations in the Asia Pacific region will enhance Galexia Consulting's project delivery in ASEAN.

Baker & McKenzie's specialist e-commerce lawyers have significant expertise in on-line content regulatory issues and advising on all aspects of on-line commerce including, on-line contracting, copyright issues associated with linking, framing and scraping and ISP liability. The e-commerce practice group includes trade practices, copyright, trade mark, defamation and privacy lawyers specialising in legal issues arising in an on-line environment.

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