Chapter 1

Legal and Regulatory Challenges in Facilitating a Sustainable ASEAN E–Commerce Sector

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ABSTRACT

The ASEAN region's potential ability to reap the benefits of e-commerce is considerable, and it is timely to strategize a sustainable pathway for ASEAN's e-commerce market. This chapter explores the arising legal and regulatory challenges with measures needed to facilitate e-commerce activities in the region. A qualitative research design is utilized to review secondary data and analyze ASEAN's current legal and regulatory framework. The findings reveal that despite the untapped potential of the collectively large "ASEAN market," there are significant challenges to developing e-commerce in some countries. Moreover, there are additional regulatory challenges in tackling a myriad of issues related to cross-border challenges in terms of security and reliability of payments: logistics, customs and border administration, foreign market access, data protection, and the regulatory environment for national and cross-border e-commerce transactions. Some form of legal and regulatory harmonization is required between member nations in order to mutually reap the benefits of e-commerce.

INTRODUCTION

E-commerce in the 21ˢᵗ century has expanded at the global level at an unprecedented rate, in tandem with high market demands in most parts of the world. For the most part, this trend has been facilitated by new technologies and trends brought about by the Fourth Industrial Revolution wave. These are rapidly developing and shaping a strong digital ecosystem designed specifically for e-commerce businesses and their customers. Thus, more and more entrepreneurs and e-commerce firms around the world are explor-

ing the infinite potential of the business of e-commerce by embracing new technologies—ones such as big data analytics, the internet of things (IoT), artificial intelligence (AI), augmented reality (AR), virtual reality (VR), and blockchain technology (ESCAP & ADB, 2018). These enabling technologies allows businesses to be in sync with evolving customer needs, greater customization, maximum convenience, and security in order to attract consumers from around the world without having the inconveniences and expenses normally associated with registering and setting up brick-and-mortar businesses in numerous countries each with a different set of laws. Furthermore, e-commerce has greater potential ability to capture the untapped markets in developing nations faster than those of more developed nations due to increase internet penetration and mobile applications (Kinda, 2019).

The ASEAN region has considerable potential to reap the benefits of e-commerce. E-commerce is touted to be a contributor to economic growth for nations jointly and severally (Mik, 2019). More importantly, it could be the integrating force for the vastly diverse ASEAN nations. The projection in a report by Google and Temasek Holdings reveals that the digital market in South East Asia (SEA) could exceed US$200 billion by 2025—which is not surprising in view of it having a joint population of 630 million people, a growing middle class, and rising internet penetration. Undoubtedly, the ASEAN e-commerce market is a potential goldfield. Improvements are required in terms of technological infrastructure, and in the regulatory and legal environment in which e-commerce firms operate across ASEAN (CCS, 2017). But the realization of its full potential requires the integrating of three dimensions—environmental, social, and economic—into e-commerce in order to ensure sustainability for both present and future generations, while thriving as an industry (Oláh et al., 2019). It is thus timely to strategize the best pathway towards achieving a sustainable ASEAN e-commerce market. Such an initiative can only be successful when multiple obstacles and challenges related to economic, environmental, legal, and institutional, as well as social, developments are properly dealt with (ESCAP & ADB, 2018).

The objectives of this chapter are two-fold: (1) to evaluate the legal and regulatory challenges that will be faced by the ASEAN e-commerce sector; and (2) to suggest the concomitant measures that are required to facilitate the ASEAN e-commerce sector. A qualitative research design is utilized to review related secondary data and analyze the current regulatory framework of ASEAN with a view to identifying the challenges that arise.

AN OVERVIEW OF E-COMMERCE DEVELOPMENT in THE ASEAN REGION

Both the Organization for Economic Co-operation and Development (OECD 2011) and the United Nations Conference on Trade and Development (UNCTAD 2017a) have defined e-commerce as transactions utilizing computer networks for the purchase and sale of products (such as physical goods, and digital products or services). These e-commerce transactions generally utilize technologies such as internet and electronic data interchange over devices such as personal computers, tablets, and mobile phones. The definition of e-commerce in this chapter also includes mobile commerce (M-Commerce) consisting of the sale and purchase of goods and services using mobile (smart) phones. This is an important consideration in view of the growth in smart phone usage that is overtaking access to conventional computers/laptops (CCS, 2017).

Currently, e-commerce is precariously positioned halfway between the phases of inception and growth e-commerce with a huge potential for future growth and adoption globally (Oliviera & Toaldo, 2015; as cited in Goyal et al., 2019, at p. 3). At one end of the continuum, the ongoing innovations in

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