

Abstract

United Nation Convention on the Use of Electronic Communication in Contract A.D. 2005 is the convention that reflects on the continual development in electronic communication technology, the electronic contract acceptance and the increasing numbers of use of electronic communication in international contract. The Convention is the result of the improvement on two model laws which are the model law on Electronic Commerce and the model law on Electronic Signature, also the United Nations Convention on Contracts for the International Sale of Goods A.D. 1998 was used as a model law for the Convention drafting as well.

The purpose of the Convention is to harmonize the general principle of electronic communication in international contract, to eliminate any problems or obstacles which may occur from the use of electronic communication in international contract in many areas such as jurisdiction, the law governing the contract, and the time and place of dispatch and receipt of electronic communication etc., to create certainty in the rules and the governing laws and to clear any electronic trading obstacles that may arise from other conventions, international laws or *lex mercatoria*.

As the Convention Article 2(2) excludes bill of lading, transferable document and negotiable instrument, the problems occur whether the Convention has an effect on the Carriage of Goods by Sea Act B.E. 2534, by excluding bill of lading does it also affect other transportation documents for examples Sea waybill, Consignment note, Ship's delivery order, Straight bill of lading? Will they be under the Convention? And by excluding bill of lading in the Convention is a mean to deny the use of the Convention to apply to the Carriage of Goods by Sea Act B.E. 2534 or not which still remains both theoretical problem and practical problem. With the fact that Carriage of Goods by Sea Act B.E. 2534 was drafted under the presumption that bill of lading is a paper based document regardless whether it may present in the form of electronic document in addition Thailand has already have the Electronic Transaction Act B.E. 2544. But what

may happen with the Carriage of Goods by Sea Act B.E. 2534 especially the contract of carriage section when Thailand decides to become parties to the Convention.

According to Article 2(2), the Convention does not apply to only bill of lading or any transferable document or instrument which is not include the electronic contract of carriage itself. Moreover the Convention is not against making a contract of carriage in electronic form as it does not necessarily require any transportation document and since a communication or a contract shall not be denied validity or enforce-ability in the form of an electronic communication under the Convention therefore the contract can be made in electronic form.

However the contract of carriage is a non-specific contract hence the contract does not need to be concluded in or evidenced by writing and is not subject to any other requirement as to form which allow parties to bring or rectify any evidence to court no matter which form the contract are.

In the case of Sea waybill, is a transportation document not a document of title that cannot be transfered by endorsement which is not an exemption provided in Article 2(2) of the Convention therefore Sea waybill can be used in electronic form under the Convention. Nevertheless, the contract of carriage without bill of lading is still under the Carriage of Goods by Sea Act B.E. 2534 if there is a Sea waybill but there might be some problems concerning trustworthiness of the contract if electronic Sea waybill were issued instead as mentioned above that Carriage of Goods by Sea Act B.E. 2534 was drafted under the presumption that transportation document is a paper based document only hence electronic Sea waybill is still not approved by the said Act.

As above mentioned, the United Nation Convention on the Use of Electronic Communication in Contract A.D. 2005 does not affect Carriage of Goods by Sea Act B.E. 2534 in the contract of carriage nor transportation document sections, on the contrary it helps access information easier. Thus in author's opinion, for the uniformity on the law of the use of electronic communication, Thailand should become parties to the United Nation Convention on the Use of Electronic Communication in Contract A.D. 2005.

