

SUBMITTED TITLE	THE LIABILITY FOR RESCISSION OF NEGOTIATION.
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ABSTRACT

In a contractual negotiation process, there may occur damages arising out of a reasonable expectation of a party that the offer and the acceptance of the parties should have been met to some extent before the contract is formed. If one party abandons the negotiation, the other may be damaged from costs and expenses which he/she has already paid for in advance preparation of contractual performance. By considering from the principle of equity, the current Civil and Commercial Code of Thailand (CCC) does not offer any specific kind of relief. This is owing to the fact that no specific and precise provision dealing with the liability in pre-contractual negotiation. Additionally, the presumption according to Section 366 of the CCC which considers that a contract is not formed does not impose any liability on the abandoning party. As present business and contractual negotiations are typically complex and complicate, it is therefore noteworthy to study the matter in order to make a proposal for amending the CCC so as to impose the liability to the party who abandons the contractual negotiation and/or to avoid loopholes in granting remedy to the other party.

This Independent Study has the objective to indicate some of the problems in relation to the liability arising out of the cancellation of a contractual negotiation that might occur during the period from the expression of intent to the point in which the contract is formed. This covers the situation where the offer and acceptance have been met but the contract is not formed because the parties cannot successfully agree in all aspects of the contractual provisions, or because it is legally presumed that the contract is not yet formed. For instance, when the parties have reached certain point of agreement thereby recording their agreement in writing, there might be some

points that a party deems essential remaining for further negotiation. In this regard, Section 366 of the CCC presumes that the contract is not yet concluded. In addition, when the offeror explicitly states that the offer is not binding (e.g. a bid announcement for invitation only), the law treats a bid letter as an offer. If the announcer cancels a bid, it is considered that a contract is not formed even if there is an acceptance of such bidding. The law also deems no formation of a contract if there is any doubt or if parties put a condition that a contract shall be put in writing unless the contract is actually executed, both of which pursuant to Section 366 para. 2 of the CCC. The aforesaid situations indeed happen prior to the contract formation, all at the stage of negotiation. It is thus questionable as to how one party in a contractual negotiation who is suffering from arranging something under reasonable expectation may exercise his/her right to claim against the other party who cancels the negotiation. If there were an explicit law implemented for entitling a party to claim for damages incurred by him/her as a result of the other party's cancellation of the negotiation to conclude a contract, especially a contract between private entities, it should induce more clarity and fairness to the parties in a negotiation. This would, in turn, boost investors' confidence, leading to increased economic stability for the country as a whole.

From the problems indicated above, the writer opines that a party who cancels a negotiation for the formation of a contract shall be deemed violating Section 420 of the CCC, provided that the revocation of an offer or the cancellation of a negotiation derives either from bad faith or without any reasonable justification according to the principle of good faith stated in Section 5 thereof. In addition, the writer views that actions should be made to effect legal provisions that can fill loopholes whilst there are still some controversies in legal academic arena as to the proper theory in posting a liability to a party in pre-contractual negotiation. This can be done by the implication of Section 5 of the CCC. By applying the principle of good faith in pre-contractual negotiations, it should promote fair and equitable practices to the parties being in the course of contractual negotiation to some extent. In addition, it is recommended that a debate for amending the CCC should be conducted in order to improve its clarity in providing relief of damages to a party who may suffer from the other party's cancellation of pre-contractual negotiations.

