

Before You Sign a Contract: What Everyone Needs to Know to Protect Their Rights

By Eksiam Chaisorn, Legal Consultant
Eksiam & Partners Co., Ltd.

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Laws referred to in this article

1. Civil and Commercial Code (CCC), Sections 149 to 181, on juristic acts, *the principal governing law*
2. Civil and Commercial Code, Sections 354 to 394, on contracts, *the principal governing law*
3. Unfair Contract Terms Act B.E. 2540 (1997), *protects consumers and parties to standard form contracts*
4. Electronic Transactions Act B.E. 2544 (2001), *gives legal effect to online contracts*

What is a contract, and how does one come into existence?

Every day we enter into "contracts" all the time, often without realizing it: clicking to buy something online, signing an employment contract, or verbally agreeing with a tradesman to repair the house. The question is: what is a contract under Thai law, and what elements must it have to be valid?

First, it helps to understand that a contract is one kind of "juristic act," which **Section 149 of the Civil and Commercial Code** defines as follows:



"Juristic acts are voluntary lawful acts, the immediate purpose of which is to establish between persons relations, to create, modify, transfer, preserve or extinguish rights." (English text as published in the Thailand Law Library; unofficial translation)

Thai original: "นิติกรรม หมายความว่า การใด ๆ อันทำลงโดยชอบด้วยกฎหมายและด้วยใจสมัคร มุ่งโดยตรงต่อการผูกนิติสัมพันธ์ขึ้นระหว่างบุคคล เพื่อจะก่อ เปลี่ยนแปลง โอน สงวน หรือระงับซึ่งสิทธิ"

A contract is therefore a bilateral juristic act: there must be both an **offer** and an **acceptance** that correspond. A contract comes into existence only when the parties reach agreement, and **Section 361** provides:

"A contract between persons at a distance comes into existence at the time when the notice of acceptance reaches the offeror." (unofficial translation)

Thai original: "อันสัญญาระหว่างบุคคลซึ่งอยู่ห่างกันโดยระยะทางนั้น ย่อมเกิดเป็นสัญญาขึ้นแต่เวลาเมื่อคำบอกกล่าวสนองไปถึงผู้เสนอ"

In practice, this means that a sale agreed by email or LINE can be legally binding once the other party's acceptance reaches the offeror; paper is not always required, except for the types of contract for which the law prescribes a form, discussed in the next section.

What does a contract need in order to be valid?

A contract enforceable under Thai law must have 4 essential elements.

- 1. The parties have capacity to enter into juristic acts**, Both parties must be sui juris, that is, twenty years of age (Section 19) or married under Section 1448 (Section 20). If a party is a minor, the prior consent of the minor's legal representative is required; otherwise the juristic act is voidable (Section 21). Any act done by a person whom the court has adjudged incompetent is voidable (Section 29).
- 2. The parties declare their intention voluntarily**, Both parties must agree of their own free will, without being coerced, deceived, or mistaken as to an essential element.



3. The object is lawful, What is agreed must not violate the law, must not be impossible, and must not be contrary to public order or good morals.

4. The form prescribed by law is followed (where there is one), For some types of contract the law prescribes a form, and a contract not made in that form is void. For example, a sale of immovable property must be made in writing and registered with the competent official (Section 456, paragraph one); a hire-purchase contract must be made in writing (Section 572, paragraph two); and a mortgage must be made in writing and registered with the competent official (Section 714). For other contracts, the law requires only written evidence in order to bring an action, which is not a formal requirement of the contract itself: for example, suretyship (Section 680, paragraph two) and the hire of immovable property (Section 538).

Void versus voidable: what is the difference?

The most common mistake in contracting is to confuse "void" with "voidable," which have entirely different legal consequences.

A void contract: a nullity from the outset

A void contract has no legal effect at all, as if it had never been made. Any interested person may invoke its nullity at any time. There are several causes.

Cause 1, a prohibited object: Section 150 provides:

"An act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals." (English text as published in the Thailand Law Library; unofficial translation)

Thai original: "การใดมีวัตถุประสงค์เป็นการต้องห้ามชัดแจ้งโดยกฎหมาย เป็นการฝ่าฝืน หรือเป็นการขัดต่อความสงบเรียบร้อยหรือศีลธรรมอันดีของประชาชน การนั้นเป็นโมฆะ"

For example, a contract to hire someone to assault another person, a contract for the sale of goods prohibited by law, or a contract whose purpose is to evade tax in violation of the law are all void.



Cause 2, failure to follow the form prescribed by law: Section 152 provides:

"An act which is not in the form prescribed by law is void." (English text as published in the Thailand Law Library; unofficial translation)

Thai original: "การใดมิได้ทำให้ถูกต้องตามแบบที่กฎหมายบังคับไว้ การนั้นเป็นโมฆะ"

For example, a sale of land that is not made in writing and registered with the competent official is void under Section 456, paragraph one, read with Section 152. An agreement to sell or to buy land, however, need not be registered; but if there is no written evidence signed by the party liable, no earnest has been given, and no part performance has been made, no action can be brought to enforce it (Section 456, paragraph two). A lease of immovable property for more than 3 years that is not made in writing and registered is not void, but it is enforceable by action for only 3 years (Section 538).

Cause 3, a fictitious declaration of intention: Section 155 provides: *"A fictitious declaration of intention made in collusion with the other party is void; but its invalidity cannot be set up against a third person who acted in good faith and has been injured by the fictitious declaration of intention."* (unofficial translation) Thai original: "การแสดงเจตนาลวงโดยสมรู้กับคู่กรณีอีกฝ่ายหนึ่งเป็นโมฆะ แต่จะยกขึ้นเป็นข้อต่อสู้บุคคลภายนอกผู้กระทำการโดยสุจริต และต้องเสียหายจากการแสดงเจตนาลวงนั้นมิได้" For example, a sham sale of assets made to evade enforcement by creditors.

Cause 4, mistake as to an essential element: Section 156 provides: *"A declaration of intention is void if made under a mistake as to an essential element of the juristic act."* (English text as published in the Thailand Law Library; unofficial translation) Thai original: "การแสดงเจตนาโดยสำคัญผิดในสิ่งซึ่งเป็นสาระสำคัญแห่งนิติกรรมเป็นโมฆะ" Paragraph two of the same section gives examples: a mistake as to the nature of the juristic act, as to the person who is the other party, and as to the property that is the object of the act, for instance a buyer who declares an intention to buy plot A believing it to be plot B, the plot the buyer actually wants.



A voidable contract: defective, but not immediately without effect

A voidable contract remains in effect for the time being, but the persons entitled under Section 175, such as the legal representative of a minor, or the person who declared an intention because of mistake, fraud, or duress, may "avoid" the contract so that it ceases to have effect, or "ratify" it to confirm that it remains valid.

The causes of voidability are lack of legal capacity of the contracting party (**Section 153**), fraud (**Section 159**, "*A declaration of intention produced by fraud is voidable.*" (*English text as published in the Thailand Law Library; unofficial translation*) Thai original: "การแสดงเจตนาเพราะถูกกลฉ้อฉลเป็นโมฆียะ"), or duress (**Section 164**, "*A declaration of intention made under duress is voidable.*" (*unofficial translation*) Thai original: "การแสดงเจตนาเพราะถูกข่มขู่เป็นโมฆียะ"). A voidable act can no longer be avoided after 1 year from the time when ratification could have been made, or after 10 years from the time the voidable act was done (Section 181); whichever period ends first, the right to avoid is lost.

Standard form contracts and unfair terms

In business life we often encounter standard form contracts whose terms one party has fixed in advance, such as service subscription agreements, online sales contracts, or office leases. **The Unfair Contract Terms Act B.E. 2540 (1997)** protects the weaker party by providing that a term which imposes an unreasonable burden on the other party, or takes unfair advantage of that party, is enforceable only to the extent that it is fair and reasonable in the circumstances. Terms often held to be unfair include a blanket exclusion of the business operator's liability, a right to change the price unilaterally without notice, and forfeiture of a deposit or a penalty at an excessive rate. The Act also applies to standard forms used between companies. The details of Sections 4 to 11 and the Supreme Court case law are discussed in our article on unfair contract terms in business contracts.



Electronic contracts: are they really enforceable?

A common question in the digital age is whether a contract made by email, LINE, or an online platform has legal effect. The answer is yes. **The Electronic Transactions Act B.E. 2544 (2001)** provides that a data message may not be denied legal effect solely because it is in electronic form, and that a reliable electronic signature may be used in place of a handwritten signature. However, contracts that the law requires to be registered with an official, such as a sale of land, must still be made in the form the law prescribes.

How to make a contract watertight and safe

Whether a contract is large or small, careful preparation at the outset is always better than solving problems once a dispute has arisen. Here is what you should do.

Spell out every detail clearly, The goods or services agreed, the price and method of payment, the delivery date and place, quality warranty terms, and the consequences of breach. The clearer the contract, the smaller the chance of a dispute.

Check the required form and registration, Some contracts are valid only if made in writing or registered with the competent official. Making a contract in the wrong form without realizing it may render it void under Section 152.

Keep complete records, Keep the signed original contract, proof of payment, records of correspondence, and all related documents in an organized way, because the burden of proof lies with the party making the claim.

A legal consultant: an advantage not to be overlooked

High-value contracts, contracts with complex terms, and contracts with foreign counterparties all carry risks hidden in every line of wording. A legal consultant does more than "draft the contract": they help you see risks that have not yet materialized, negotiate fairer terms, and structure the contract to deal with every situation that may arise in the future. Setting out clear terms from the start usually costs less than resolving a dispute later.



Key points

- A contract comes into existence when the acceptance reaches the offeror; paper is not always required (CCC, Section 361)
- A void contract (a nullity from the outset) results from a prohibited object, a failure to follow the prescribed form, a fictitious declaration of intention, or a mistake as to an essential element of the juristic act (Sections 150, 152, 155, and 156)
- A voidable contract (defective but effective for the time being) results from lack of capacity, fraud, or duress (Sections 153, 159, and 164)
- Unfair terms in standard form contracts are enforceable only to the extent that they are fair (Unfair Contract Terms Act B.E. 2540 (1997))
- Online contracts have legal effect, except for contracts that the law requires to be registered (Electronic Transactions Act B.E. 2544 (2001))

