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Business Law Practitioners



VIETNAM

E-commerce Guide

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Introduction

The estimated revenue from e-commerce in Vietnam in 2021 was about US\$13.7 billion, increasing 16% in comparison with 2020, and accounting for 6.5% of the country's total revenue from retail industries. Much of the e-commerce market in Vietnam is now dominated by foreign invested or cross-border companies. This is seen in the fact that three of the four largest e-commerce trading floors in Vietnam are majority owned by foreign shareholders. In addition, the popular social networks such as Facebook or TikTok, are transitioning into e-commerce activities by permitting users to display commercial advertisements and to perform the purchase and sale of goods and services. E-commerce in Vietnam is predicted to increase to US\$57 billion by the year 2025. E-commerce, then, is a vital aspect of the economy, and will only continue to become one of the largest contributors to the country's GDP.

Despite the growing importance of e-commerce in Vietnam, and the current projects to implement legal reforms in the sector, much e-commerce activity is spread across different laws and decrees making it difficult to determine the specific requirements of the law. This legal guide will provide an overview of existing e-commerce regulations.

E-commerce Activities

E-commerce activity is defined as the conducting, a part or all of the process, of commercial activities by electronic means connected to the Internet, mobile telecommunications network or other open networks.

The subjects responsible before the law in relation to e-commerce comprise the following:

- (i) Vietnamese traders, organizations and individuals (including the foreign invested enterprises (“**FIEs**”));
- (ii) Foreign individuals residing in Vietnam; and
- (iii) Foreign traders and organizations having e-commerce service provision websites in Vietnam, i.e., cross-border e-commerce service providers. E-commerce service provision websites in Vietnam are those that have the national domain name of Vietnam; use the Vietnamese language; or have more than 100,000 transactions from Vietnam in a given year.

E-commerce activities can be conducted via (a) sales e-commerce websites which serve the owners interests through commercial promotion, sales or service supply; or (b) e-commerce service provision websites which include trading floors, online auction websites, online promotion websites and other websites regulated by the Ministry of Industry and Trade (the “**MOIT**”).

The owners of apps installed on electronic devices which can connect to networks that allow users to access entities operating the purchase and sale of goods or provide services are treated as business entities conducting e-commerce activities and are required to comply with the regulations applicable to the sales e-commerce websites or e-commerce services provision websites.

Sales E-commerce Websites

Traders, organizations and individuals who have obtained personal tax codes in Vietnam have the right to establish sales e-commerce websites. Sales e-commerce websites offering an online order function must notify the Vietnam E-commerce and Digital Economy Agency (the “iDEA”) attached to the MOIT before officially beginning operations. Notifications may be conducted online via an account registered at the portal <http://online.gov.vn/>. The website owner is responsible for notifying the iDEA of any change to the information required to disclose to the iDEA or of the termination of the website within seven working days of such change. Furthermore, disclosed information must be updated annually.

The owner of a sales e-commerce website has the following responsibilities:

- (i) To provide customers with prescribed information, and to be responsible for the accuracy and completeness of such information, including information about the owner of the website; information about goods and services; prices of goods or services; general trading conditions, i.e., terms and conditions of use; information about the conditions for shipment & delivery; and payment methods. Such information must be able to be stored, printed or displayed, and for sales websites with an online ordering function, links to the terms and conditions and information about the conditions for shipment and delivery and payment methods must be placed in the homepage of the website;
- (ii) To comply with regulations on personal information protection and related regulations;
- (iii) To provide information related to e-commerce activities at the request of the competent authorities for the purpose of statistics, inspection, examination and handling of violations in the e-commerce sector;
- (iv) To store information related to transactions carried out through the e-commerce website in accordance with the law on accounting and fulfill tax obligations as prescribed by law; and
- (v) To submit the annual report according to the template and notice of the iDEA on their registered account at <http://online.gov.vn/>.

Establishment and Operation of E-commerce Service Provision

Websites

Vietnamese enterprises are permitted to establish e-commerce service provision websites appropriate to their registered business lines. Cross-border e-commerce service providers which meet specific criteria¹ are required to establish a representative office or appoint an authorized representative in Vietnam to fulfil their responsibilities and obligations during the course of provision of e-commerce

¹ As of this moment the requirement for opening a representative office is limited to the Cybersecurity Law. However, the Ministry of Public Security (MPS) has orally confirmed that they will only enforce this provision should a cross-border service provider fail to comply with requests of the authorities regarding the removal of content that violates the Vietnamese law.

services, including the registration of their websites with the iDEA. The application dossier for registration of e-commerce service provision website is made online by the owner of the website at <http://online.gov.vn/>.

The iDEA will send a registration number (“mã số đăng ký” in Vietnamese) to the registered email or the registered account of the applicant. Hard copies of documents must then be submitted to the iDEA for completion of the registration procedure. Upon confirmation of registration, the website owner will receive a digital badge that must be displayed on the homepage of the e-commerce service provision website. It must link users to the owners’ registration information at the e-commerce activity management information portal. Changes to registered information must be disclosed on the iDEA portal within seven working days of their occurrence.

The registration of an e-commerce service provision website may be cancelled by the iDEA in the following cases:

- (i) The service provider conducts prohibited acts;
- (ii) The service provider fails to fulfil its reporting obligations;
- (iii) The service provider is suspended from e-commerce activities under the decision on handling of violations by the competent authority; and
- (iv) The service provider fails to comply with the prescribed responsibilities and recidivism after being warned.

The registration of the e-commerce service provision website may be terminated in the following cases:

- (i) The service provider submits the request for termination of registration;
- (ii) The service provider stops operating or transfers the e-commerce service website;
- (iii) The e-commerce service provision website fails to operate or fails to respond at the request of the iDEA or other competent authorities within 30 days;
- (iv) The service provider is subject to administrative penalties for violations in the sector of e-commerce and is subject to additional penalties of “cancellation of registration” or “suspension of e-commerce operation” by the competent authority; and
- (v) Other cases prescribed by the MOIT.

E-commerce Trading Floor

E-commerce trading floors are e-commerce websites that allow entities other than the website owners to conduct a portion or all of the process of selling and purchasing goods and services on the same.

E-commerce trading floor can operate in one of the following forms:

- (i) a website allows users to open booths for display and introduction of goods or services;
- (ii) a website allows users to open accounts for carrying out the process of contract conclusion with the users;

- (iii) a website has a sale and purchase section allowing users to post information on sale and purchase of goods and services;
- (iv) a social network that has one of the forms of activities specified above and users directly or indirectly pay service fees for doing such activities; and
- (v) a licensed commodity exchange website that allows users to carry out a sale and purchase of goods.

Owners of e-commerce trading floors must publish identifying information, the standard terms and conditions of the website. They must monitor the website to ensure that users comply with such terms and conditions. They have the right to request and record sellers' information related to their identity and activities and require the same to be posted by the sellers in Vietnamese language. They must provide a mechanism for sellers and buyers to conclude and execute contracts according to the law. If foreign sellers register on the website, the owner is responsible to ensure their behavior does not violate the terms and conditions or the law of Vietnam. They must ensure cybersecurity on the website and protect trade secrets of traders and the personal data of users. They must take action to prevent and stop violations on the trading floor and cooperate with the relevant authorities to resolve the same. They must provide dispute resolution mechanisms.

Online Promotion Website

Online promotion websites are e-commerce websites set up by traders and organizations to perform the promotion of the goods and services of other traders, organizations or individuals. Online promotion services can be provided in one of the following forms:

- (i) sale of vouchers / coupons for the clients to buy goods or use services of the partners at preferential prices or other benefits;
- (ii) sale of the loyalty card for the clients to use goods or services from a network of partners at preferential prices or other benefits compared with those upon purchase of goods and services in each individual partner; and
- (iii) other forms of online promotion services regulated by the MOIT.

The owner of an online promotion website must comply with regulations of the commercial law and other relevant laws. They must publish the terms and conditions, monitor and ensure the implementation of the same. They must establish methods to connect users to the promoted goods or services and allow for a contract to be entered into by those parties. They must publish information of each sponsor through their website. They must provide a mechanism to receive and settle complaints. They must take responsibility to third parties in providing information about goods and services to the clients. They must compensate users if issued vouchers / coupons service vouchers / royalty cards are denied by the promoted partners contrary to the conditions publicized on the online promotion website.

Online Auction Website

Online auction websites are e-commerce websites that provide solutions that allow traders, organizations and individuals that are not the online auction service providers to auction their goods on the same website.

Owners of online auction websites must first meet all the responsibilities of an e-commerce trading floor as discussed above. They must provide online auction methods and procedures. They must provide technical systems to serve the auction procedures and provide tools for sellers to publicize the relevant good or service that is being auctioned. They must provide sellers with progress updates on the respective auctions and provide auction results immediately after the end of an auction. Finally, they must assume responsibility in case of errors in the technical system they provided to users.

Protection of Personal Data in E-commerce Activities

In the course of conducting e-commerce business, if the owners of such business collect personal information of consumers (the “**data subjects**”), the collector must comply with the regulations on the protection of personal information, which include the following:

- (i) To display a privacy policy of which the contents must comprise the purpose and scope of use of collected personal information; terms of information storage; persons who may have access to that information; information about the information collector and controller, including methods of contact; and the method for data subjects to access and modify or correct their personal information;
- (ii) To obtain consent from the data subjects prior to the collection of their personal information; the collection of personal information in the process of entering into a contract for the sale and purchase of goods and services; and the collection of personal information to calculate the price and charge of use of that information;
- (iii) To create specific mechanisms so that data subjects can select the option to permit or refuse the granting of consent for use of their personal information in the following cases: (a) sharing, disclosure and transfer of personal information to a third party; and (b) using personal information for sending the data subjects commercial advertisements;
- (iv) To use the collected information within the scope of the consent of the data subject, except for the cases (a) of having a private agreement with the data subject that is additional to the privacy policy published; (b) for providing services or products at the request of data subjects; and (c) for performing obligations as prescribed by law;
- (v) To ensure the safety and security of personal information collected and stored, and to prevent the acts of stealing or unauthorized access to the information, unauthorized use of information, and unauthorized change or damage of information;
- (vi) To have a mechanism to receive and settle the data subjects’ complaints concerning the improper or unauthorized use of their personal information;
- (vii) To notify the competent authorities within 24 hours after the detection of incident of any attack which may risk the loss of consumer’s information; and
- (viii) To perform the checking, updating, modification or deletion of personal information at the data subject’s request, or to provide the data subject with relevant tools for doing so.

Certain Issues Related to E-commerce Websites with Online Ordering Function

Contract Conclusion and Termination

If an e-commerce website has an online ordering function, then the introduction of information about goods and services in combination with the relevant terms and conditions shall be regarded as a proposal for conclusion of a contract with the seller. Subsequent e-documents created by customers and sent by using the online ordering function on the website shall be regarded as a proposal for conclusion of a contract for the goods or services associated with that online ordering function. The validity of a customer's proposal for conclusion of contract shall be deemed terminated if the customer does not receive a response to such proposal within the stated time limit in the proposal of the seller.

A response to acceptance or denial of the proposal for conclusion of contract must be done in the appropriate form so that the information can be stored, printed and displayed in the customer's information system. The time of conclusion of a contract upon the use of an online ordering function on e-commerce websites occurs when the customer receives the seller's acceptance of the customer's proposal for conclusion of the contract, which must include the following information: (a) list of all goods or services that customers have ordered, the respective quantity and price thereof and total value of the contract; and (b) the time of delivery or service provision; and seller's contact information. Customers can send notifications on the termination of their contract with a seller by using the provided online tools that the seller provides on their website.

A notice by e-document of a proposal for conclusion of contract without a specific recipient, i.e., those generally displayed on e-commerce websites, shall not be considered as a proposal for conclusion of contracts, unless the proposer has expressly specified their responsibilities upon receipt of the acceptance of such proposals from customers. Conversely, an e-document created by a customer and sent using the online ordering function shall be regarded as the proposal for conclusion of contract by the customer for the goods or services associated with that online ordering function.

Information provision

E-commerce websites must provide customers with prescribed information before customers submit their proposal for conclusion of a contract, including information about the goods and services, price, general transaction conditions, shipment and delivery, and payment method.

E-commerce website must permit customers to review, supplement, modify and confirm the transaction contents before using the online ordering function. This mechanism must:

- (i) display the following information to customers: name of goods or services, the number and type; method and time of goods delivery or provision of services; total value of the contract and the details regarding the payment method selected by the customer;

- (ii) such information must be capable of being stored or print on the system of the customer or be capable of being displayed;
- (iii) display information about the way for customers to respond to the proposal for conclusion of contract and the time limit to respond to the proposal for conclusion of contract; and
- (iv) permit customers to select the cancellation of transactions or confirmation of the proposal for conclusion of contract.

Obligations of Owners of E-commerce Websites with Online Payment Function

The owners of e-commerce websites with online payment function must publish on their website policies on the security of customers' payment information; ensure the safety and security of customer's payment transactions; handle complaints; and compensate for damages in case the customer's payment information is illegally changed, deleted, removed, duplicated, disclosed, moved or appropriated causing damage to customer.

Issues Related to E-documents in E-commerce Activities

E-documents used in e-transactions will be deemed to have the same validity as an original copy if the data message in such e-documents satisfies the conditions of integrity from the time of its creation, and is accessible and usable in its complete form as needed. Such data message is not automatically deemed valid as legal evidence which will be determined both on the basis of its integrity and the reliability of the method of creating, storing or transmitting the data message; the method of identifying the creator and on other relevant elements.

Data messages in e-documents are assessed to be integral when it is in its complete form without any change or amendment, except for a change of format arising from the process of exchanging, storing or displaying such data message. The reliability of such data message is determined on the basis of the agreement of the involved parties to apply one of the prescribed methods, in particular:

- (i) e-documents are signed / executed by using a digital signature provided by a licensed digital signature certification service provider;
- (ii) such e-documents are stored in the system of the licensed third party service provider in provision of e-contract certification service who is agreed / selected by the involved parties;
- (iii) such e-documents are ensured to be integral by technical infrastructure service providers for creating, storing and transmitting e-documents during the transmission and storage on its system; or
- (iv) other mechanisms / measures are agreed by the involved parties.

Digital signatures used in certifying e-documents must be provided by a local digital signature certification service provider who has been granted a license for provision of public certification of digital signatures in Vietnam or a foreign digital signature certification service provider who has been granted a license for provision of such by Vietnamese authorities.

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