



Special Alert

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Draft Decree Amending Decree 52 on E-commerce

The Ministry of Industry and Trade (the “**MOIT**”) has recently proposed a new decree (the “**Draft Decree**”) to amend and supplement Decree No. 52/2013/ND-CP dated 16 May 2013 on e-commerce (as amended by Decree No. 08/2018/ND-CP dated 15 January 2018) (“**Decree 52**”). The Draft Decree will remedy identified deficiencies in regulations and deal with issues that have occurred during the implementation of Decree 52 such as the sale of fake goods in e-commerce trading floors; the control of e-commerce activities on social network platforms; the control of cross-border e-commerce activities; the management of foreign investment activities in Vietnamese enterprises doing business in e-commerce trading floors; etc. The Draft Decree aims to improve the administrative procedures to encourage enterprises to comply with e-commerce regulations and provide more effective state management in the sector.

The Draft Decree reconsiders Decree 52 and its guiding regulations, including Circular No. 59/2015/TT-BCT dated 31 December 2015 on e-commerce activities via mobile application to streamline regulations on e-commerce. Some worth-mentioning points thereof are as follows:

ETFs defined

Instead of three types of e-commerce trading floor (“**ETF**”), the Draft Decree covers new forms of ETF activities which have been recently developed, comprising:

- (a) Website or application (app) that enables participants to create stalls or set up branch websites to exhibit and introduce goods or services;
- (b) Website or mobile app that enables participants to open accounts to post information on service provision and interact with customers;

- (c) Website or app with buy and sell categories that enables participants to post information on provision of goods and services;
- (d) Social networks with one of the aforesaid features.

Responsibilities of ETF owners

Owners of ETFs must monitor sellers on the ETF, as well as cooperate with competent agencies to handle violations as follows:

- (a) Be responsible for requesting sellers on the ETF to provide certain prescribed information (e.g. name and registered address, business license number, contact information, etc.) and publish such information on the respective stalls of such sellers. For foreign sellers, ETF owners shall clearly display the sellers' names as translated or transcribed in Vietnamese;
- (b) Proactively prevent and remove from the ETF information on prohibited goods/services; remove violating goods/services from the ETF within 24 hours of receipt of request from competent agencies; and cooperate with relevant rights holders to remove intellectual property infringing goods/services;
- (c) Provide registration information, transaction history, and other documents relating to the subject committing legal violations on the ETF; filter goods and services as well as regularly update keywords as recommended by competent authorities; resolve claims, complaints, and disputes between online management and the dispute resolution system of the MOIT at online.gov.vn;
- (d) For B2C ETFs with an online order and payment function, their owners are subject to the additional obligations:
 - (i) Provide tools to assist the regulatory agencies in identifying sellers and transactions related to sellers for the purpose of inspection, examination, and handling of complaints and reports;
 - (ii) Set up separate areas on the ETF to summarize information about foreign sellers, if applicable; implement technical methods; prohibit foreign individuals to sell goods and service on the ETF;
 - (iii) Be responsible for goods sold by foreign sellers on the ETF, and for the declaration, deduction and payment of the foreign contractor tax, etc.

Foreign-related trading

Foreign traders who operate e-commerce activities by establishing (i) websites under Vietnamese

domain names, or (ii) websites / apps including the Vietnamese language, or who participate in trade on the ETFs in the territory of Vietnam are subject to new regulations under the Draft Decree. Particularly, regulations on import-export rights of foreign traders without a commercial presence; regulations on consumer protection and personal data security, etc.

The Draft Decree also mentions a notification obligation for foreign traders. This requires them to clearly identify the Vietnamese entity acting as their legal representative, or the partner authorized to fulfill obligations with competent agencies and to settle disputes with consumers in Vietnam. It remains unclear to which type of e-commerce activities (i.e. sales e-commerce or ETF website / app) this regulation applies.

Other issues

The Draft Decree adds a definition of “*establishing website/application*” as the act of traders, organizations and individuals by themselves or through contractors to establish, or are authorized or entitled to use, exploit and operate such e-commerce websites / apps, etc.

Foreign traders subject to the governing scope of the Draft Decree now include “foreign traders, organizations having a commercial presence in Vietnam through investment activities, establishment of branch or representative office, establishment of website under the Vietnam domain name or website having Vietnamese language”.

The MOIT expects to complete the Draft Decree for presentation to the Government for approval in Q4 2020.

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