

NEW REGULATIONS ON E-COMMERCE

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On September 25, 2021, the Government of Viet Nam promulgated Decree 85/2021/ND-CP (**Decree 85**) amending and supplementing certain contents of Decree 52/2013/ND-CP on e-commerce (**Decree 52**). Some of Decree 52's provisions, after having been applied for years, are no longer suitable to the practical e-commerce activities in Viet Nam, which have undergone many changes and development. Decree 85 is issued aiming to fill such gaps as well as to supplement the legal background for emerging e-commerce activities. This article will introduce the noteworthy changes for enterprises to ensure compliance in provision of e-commerce services and business investment activities on e-commerce platforms.

Firstly, social networking sites have been officially recognized as a type of e-commerce exchange from January 1, 2022 (the effective date of Decree 85). To be specific, a social networking site shall be recognized as an e-commerce exchange if it performs one of the followings: (i) allowing users to open online stores for display and introduction of goods and/or services; (ii) allowing users to create accounts for processing contract execution with customers; (iii) providing marketplace section, which facilitates users to list their products and services online. Such social networking sites will be able to provide e-commerce exchange services and directly/indirectly collect fees from participants.

Secondly, requirements for product and service information on e-commerce websites for selling (which is created by an entity to trade its products) have been more rigorously specified. Accordingly, clause 12, Article 1 of Decree 85 has added new requirements that the product information displayed on websites must include the mandatory contents on goods label in accordance with the law on goods labelling, except for information of goods' peculiarities such as: year, month, manufacturing date, expiration date, batch (lot) number, chassis

number (or vehicle identification number-VIN). For goods and services as the products of conditional investment and business fields, providers must publicize the number (code), granting date and granting body information of relevant certificates, licenses, confirmation/approvals or equivalent documents under the regulations on business conditions applied to such fields.

Thirdly, regulations on the responsibility to settle consumer complaints against merchants have been supplemented. Clause 16, Article 1 of Decree 85 indicates that e-commerce exchange service providers shall be responsible for receiving and responding to arising matters for resolution of e-commerce related complaints, reflections or disputes at online.gov.vn - the e-commerce management portal of the Ministry of Industry and Trade.

Regarding e-commerce exchanges with online ordering function, the providers of e-commerce exchange service shall be responsible for:

- (i) Designating contact points to receive requests and provide online information to state management bodies about subjects with signs of law violations; and such contact points shall furnish the relevant information within 24 hours from the time of receiving requests to promptly and duly serve the inspection, examination, violation sanctioning and settlement of complaints and denunciations;
- (ii) Representing foreign merchants on e-commerce exchanges to settle consumer complaints related to products and services provided by such merchants and taking the charge of notifying foreign merchants' tax obligations arising from e-commerce exchange engagement as stipulated in Vietnamese laws; also, being the focal point for receiving and settling consumer complaints resulting from a more-than-2-party transaction executed on e-commerce exchange.

Last but not the least, the legal basis for e-commerce activities by foreign traders and organizations has been supplemented. Specifically, it is the first time that e-commerce law has provided the criteria to determine foreign traders and organizations that have websites providing e-commerce services in Viet Nam, including: (i) e-commerce websites with Vietnamese domain name; (ii) e-commerce websites displaying Vietnamese

language; and (iii) e-commerce websites with over 100,000 transactions from Viet Nam per year. Accordingly, the number of transactions from Viet Nam shall be determined based on (i) voluntary reports of traders and organizations; (ii) official data of Viet Nam's competent state management agencies (customs; internet management bodies; banking and tax management bodies); (iii) available and public reports, information of which the authenticity can be proved by relevant authorities. The above-mentioned foreign entities are obliged to register e-commerce activities and set up representative offices in Viet Nam, as well as to comply with the required liabilities under Decree 52 and this Decree.



COMMENTS AND RECOMMENDATIONS

With such new regulations, from January 1, 2022, Decree 85 is expected to partially narrow the gaps that Decree 52 cannot meet in the e-commerce development practice in Viet Nam. Entities operating social network services that are planning to add or having e-commerce business function need to comply with the conditions and responsibilities of traders and organizations providing e-commerce exchange service. In term of entities currently using social network as a channel for product, service distribution, the same responsibilities compared to sellers on e-commerce exchanges shall be strictly adhered to. Besides, enterprises need to uphold their responsibility to ensure feedback and complaint settlement, as well as to coordinate with state agencies in resolving disputes and complaints arising from business activities in digital environment. For foreigners conducting e-commerce service business in Viet Nam, they should carefully determine whether they are subject to the governance of Decree 85 to limit unnecessary legal risks.

In addition to the regulations of Decree 52, businesses are suggested to regularly update new guidelines for e-commerce activities in Viet Nam in order to meet the stipulated requirements, conditions and responsibilities and also to protect their rights and interests when operating investment and business on digital platforms.