

LEGAL COMPLIANCE GUIDELINES FOR E-COMMERCE SELLERS (ECS)

This legal brief lists the key requirements and regulations applicable to ECS businesses who sell their products or services online.

1. E-Commerce Registration

The activity of selling goods or services by electronic means via the internet network system as a profession or online sale is required by the Notification of the Ministry of Commerce re: Commercial Registration Required for Commercial Operators (No. 11) B.E. 2553 (2010) issued under the Business Registration Act B.E. 2499 (1956) to obtain a commercial registration certificate for e-commerce (“**E-Commerce Registration**”) within 30 days of commencing the e-commerce business.

2. Direct Marketing Registration

Online sales of goods and services is a “direct marketing business”, i.e. marketing of goods or services by communicating information to offer goods or services directly to consumers at a distance with the expectation of obtaining purchase orders from such consumers, and it is required to obtain a direct marketing registration from the Office of the Consumer Protection Board (“**OCPB**”) under the Direct Sale and Direct Marketing Act B.E. 2545 (2002) (“**DSDMA**”).

However, certain e-commerce activities are excluded from the definition of “direct marketing” and exempt from compliance with the DSDMA, i.e. e-commerce by individual sellers earning revenues from e-commerce not exceeding THB1.8 million, sellers who are registered small enterprises, medium enterprises, community enterprises, community enterprise networks, cooperatives or farmer groups.

ECS should be mindful of the consumer rights and other obligations under the DSDMA. The DSDMA provides a number of consumer rights such as the right to terminate the sale contract within 7 days from the date the buyer receives the goods or service and obtain a refund within 15 days from the date the ECS receives the termination notice from the buyer.

3. Display of Prices and Other Product Details

ECS must display the prices and details of their products in compliant with the Notification of the Central Committee on Prices of Goods and Services No. 64 B.E. 2566 (2023) re: Displaying of Price and Details of Goods and Services via E-Commerce or Online System issued under the Prices of Goods and Services Act B.E. 2542 (1999).

The followings are the key requirements:

- (1) price, type, kind, size, weight and other details of the product must be available online in a clear, complete, open and easily readable manner;
- (2) prices must be displayed in “per unit price” and must contain Arabic numerals;
- (3) other charges or fees collected in addition to product price must be displayed in a clear, complete and open manner together with the product price; and

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- (4) statement or list that appears together with the product price or the service fees must be in Thai, or in Thai and another language.

4. Foreign Business Restrictions

The Foreign Business Act B.E. 2542 (1999) (“**FBA**”) prohibits or restricts foreigners from operating certain businesses. A legal entity is considered as a “foreigner” if 50% or more of its shares are held by (1) a non-Thai national, (2) an entity registered outside Thailand, and/or (3) an entity registered in Thailand whose 50% or more of its shares are held by non-Thai national and/or non-Thai entity.

The retail and wholesale businesses are restricted businesses under List 3 of the FBA and they are required to obtain a foreign business license (“**FBL**”) or a foreign business certificate (“**FBC**”) as applicable under the FBA. However, a foreigner can operate a retail and wholesale business without an FBL or an FBC if it has a fully paid-up registered capital of at least THB100 million, i.e. THB20 million per retail shop but not less than THB100 million in total or THB100 million per wholesale shop.

5. Other Applicable Regulations

(1) Consumer Protection

The Consumer Protection Act B.E. 2522 (1979) regulates consumer protection in 3 areas for both online and offline sales, i.e. advertisement-related matters, safety-related matters and contract-related matters. ECS must ensure that product descriptions and advertisements are not unfair to consumers or cause adverse effect to the society, e.g. giving a false or exaggerated statement, encouraging commission of unlawful act or making factual claims which cannot be substantiated.

(2) Product-Specific Regulations

Certain products may be regulated by specific legislations and sellers may be required to obtain a license or comply with other relevant regulatory requirements before and/or while selling such products. Although the requirements may not differ from offline sales in most cases, certain products such as alcohol, cigarettes and non-household medicine are prohibited from being sold online, despite the seller possessing the license to sell under the relevant laws.

(3) Product Liabilities

Sellers regardless of online or offline sales can be liable for damage caused by an unsafe product under the Liabilities for Unsafe Products Act B.E. 2551 (2008) if the manufacturer, hirer of the manufacturer or importer of the unsafe product cannot be identified, except for a few exceptions, e.g., the injured person already knew that the product is unsafe, the damage/injury caused from incorrect storage or usage of the product by the consumer against the information or warning given correctly by the seller.

A new law on liabilities for defective products, in addition to the liabilities for defective goods under the Civil and Commercial Code, may be issued in the near future.

(4) Intellectual Property Rights

Intellectual property rights also play an important role in e-commerce. The trademark law may be relevant for new ECS seeking brand development and protection, while the copyright law would be relevant for the use of contents in the promotion of products (such as product photos, videos and livestreams). ECS should ensure that their brand, products and contents are legally protected and do not violate another's intellectual property rights.

(5) Tax-Related Matters

ECSs are subject to income taxes from their revenue at the applicable tax rates and the value added tax (VAT) from their sales and/or services under the Revenue Code. Tax may be a complicated area for ECS, especially for those who offer their products for sale on a third-party e-marketplace platforms. As e-marketplace platforms become more mature with more services offered, it is important for ECS on these platforms to keep track of the various fees charged or collected by the platforms and ensure proper tax compliance for the relevant fees and understand their arrangement in relation to tax issues.

Under the Revenue Department Notification on Income Tax - Requiring Electronic Platforms to Prepare Special Accounts dated 27 December 2023, e-marketplace platforms with annual revenue exceeding THB1,000 million are required to report to the Revenue Office the revenue data of ECS as their business users offering / selling products and/or services on their e-marketplace platforms.

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